

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-272
District Docket No. XIV-03-693E

IN THE MATTER OF
RICHARD J. COHAN
AN ATTORNEY AT LAW

Decision

Argued: November 18, 2004

Decided: December 17, 2004

Michael J. Sweeney appeared on behalf of the Office of Attorney Ethics.

Raymond S. Londa appeared for respondent, who was also present.

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

This matter was before us based on a disciplinary stipulation, filed by the Office of Attorney Ethics ("OAE"), pursuant to R. 1:20-15(f).

Respondent was admitted to the New Jersey bar in 1974. He has no history of discipline.

On July 19, 2004, respondent entered into a disciplinary stipulation with the OAE, in which he admitted that he failed to

reconcile his attorney trust account, resulting in the negligent misappropriation of trust funds, violations of R.1:21-6 and RPC 1.15.

The facts below are contained in the OAE investigator's May 13, 2004 report, which was made a part of the stipulation.

Respondent is a sole practitioner, primarily acting as the settlement agent for real estate transactions involving Land Title Agency, Inc. In October 2003, he received an overdraft notice regarding his attorney trust account. Up to that time, he had maintained minimal records, with some help from his son, who usually made book entries for each matter.

In a typical matter, respondent would summarize the disbursements on a handwritten piece of paper placed in the case file. He would give the paper to his son, who would then input the information into a computer software program.

The funds from lenders were universally wire transfers to respondent's trust account. Some smaller deposits, typically for costs associated with closing, were sometimes made by depositing certified or personal checks from the client.

By respondent's own admission, he did not confirm that wire transfers were received in his attorney trust account, before making disbursements against them. In October 2003, as a result of the overdraft notice and the concomitant OAE inquiry,

respondent retained an accountant. Prior to that time, respondent had not reconciled the trust account.

The OAE audit disclosed shortfalls in the trust account ranging from \$400,000 to \$700,000 for the period of March 2003 through November 2003, as explained below.

In three separate matters, respondent's conduct caused these significant shortages in his attorney trust account.

I. The Strauss Matter

On March 17, 2003, respondent represented the Strausses in a mortgage refinancing. The Strausses gave respondent \$1,619.93 to augment lender funds to be wired to the trust account prior to closing. At closing on the same date, respondent disbursed trust account checks for various amounts totaling \$598,523.79. Respondent did not confirm the lender's wire-transfer deposit to his trust account (\$596,903.86) prior to disbursement.

In July 2003, when the Strausses did not receive their payment coupons, they were informed by the lender that it had not received some required documents prior to closing and, therefore, had not issued the loan.

Thereafter, respondent reviewed his trust account bank statement and discovered that he had never received the wire

transfer. Indeed, he had received only the Strausses' \$1,619.93 toward the closing.

During the investigation, respondent stated that he had sent the required closing package containing all required documents to the lender and that the lender had either not received or had lost the package.

Respondent sent the lender a copy of a Federal Express receipt showing that the documents had been forwarded and requested that the funds be wired into his attorney trust account immediately. On July 29, 2003, over four months after the closing, the lender wired the necessary funds to respondent's trust account. As a result of respondent's actions, his trust account had a shortfall of \$596,903.86 from March 19, 2003 to July 29, 2003.

The Parentela Matter

On August 26, 2003, respondent acted as settlement agent in a transaction for Russell and Judith Parentela. At closing, respondent distributed trust account checks for various amounts totaling \$720,509.89. Here, too, the wire transfer necessary to fund the loan was not sent to respondent's trust account. Respondent admitted that he never confirmed his receipt of the funds prior to making disbursements of \$720,509.89.

As a result, on September 25, 2003, respondent's trust account experienced a shortfall. The overdraft prompted respondent to review his bank statements, at which time he discovered that the \$720,509.89 had not been received. Respondent subsequently learned from the lender that the mortgage broker had failed to notify it to fund the loan.

On September 26, 2003, at respondent's request, the lender wired the funds to his trust account in the amount of \$720,509.89.

III. The Khanna Matter

In May 2003, respondent represented Rajesh Khanna in a mortgage refinancing. During the three-day right of rescission period, Khanna determined to rescind the transaction.

Respondent claimed, during the OAE investigation, that he had sent a timely rescission notice to the lender. On May 29, 2003, however, the lender funded the loan and wired \$423,450.79 to respondent's trust account.

On June 16, 2003, respondent noticed the errant deposit, and forwarded a trust account check for \$423,450.79 back to the lender. In the meantime, on July 31, 2003, the lender demanded that respondent wire the funds immediately. Without checking the status of his June 16, 2003 draft to the lender, on July 31,

2003, respondent instructed his bank to wire \$423,450.79 to the lender.

In fact, by that time the lender had already negotiated respondent's trust account check. As a result of respondent's actions in returning the original funds plus another \$423,450.79, his trust account experienced a shortfall on October 28, 2003.

Respondent later discovered his error and contacted the lender to demand the return of the overage. On November 3, 2003, respondent received the lender's refund of the entire \$423,450.79.

As a result of his actions, respondent was out of trust by at least \$423,450.79 from July 31, 2003 to November 3, 2003.

Miscellaneous Trust Account Discrepancies

Shortly after the overdraft notice of October 2003, respondent retained an accountant to reconcile his trust account. The accountant determined that a shortfall of \$9,062.59 remained in the trust account. Therefore, respondent infused his own funds to balance the account. The accountant's breakdown is as follows:

Client Matter	Date of Debit Balance	Date Replaced	Amount Replaced
Bank Charges	?	11/30/2003	\$1,584.50
Unknown	?	11/30/2003	\$ 464.55
Feliciano	03/25/2002	11/30/2003	\$.60
Finkler	03/26/2002	11/30/2003	\$.06
Jackson	03/19/2003	11/30/2003	\$ 728.08
Lakik	06/04/2003	11/30/2003	\$2,224.46
Natanov	03/21/2003	11/30/2003	\$.30
Galvin	08/18/2003	11/30/2003	\$1,256.90
Shafer	03/07/2003	11/30/2003	\$2,803.14
			\$9,062.59

[OAE Investigative Report at 8.]

The Recordkeeping Violations

The OAE audit also disclosed numerous recordkeeping improprieties, violations of R.1:21-6 and RPC 1.15, as follows:

1. trust account receipts journals were not fully descriptive;
2. trust account ledger cards were not fully descriptive;
3. trust account ledger cards were found with debit balances;
4. no schedule of clients' ledger account balances was prepared and reconciled monthly to the attorney trust account bank statement;

5. old outstanding trust account checks were unresolved;
6. trust account disbursements were made against uncollected funds;
7. attorney trust account deposit slips lacked sufficient detail;
8. no business account receipts journal was maintained;
9. no business account disbursements journal was maintained;
10. not all earned legal fees were deposited into the attorney business account; and
11. the attorney business account was being used to account for transactions unrelated to the legal practice.

[OAE Investigative Report at 8-9.]

Upon a de novo review of the record, we are satisfied that the stipulation establishes that respondent was guilty of unethical conduct.

Respondent stipulated that his actions amounted to negligent misappropriation of client trust funds. The two trust overdrafts initially disclosed shortages of more than \$200,000 and \$73,000, respectively. The OAE audit disclosed shortages ranging from \$400,000 to \$700,000 between March and November 2003. The trust account shortages were a direct result of respondent's failure to verify the status of funds in, or to properly reconcile, his attorney trust account.

In March 2003, respondent disbursed \$598,523.79 in the Strauss matter, with only \$1,629.93 in the trust account.

Respondent failed to confirm that the lender had wired funds to his trust account, before issuing disbursement checks.

In August 2003, respondent disbursed \$720,509.89 in the Parentela matter, again having failed to confirm the receipt of \$720,509.89 in funds to be wired by the lender. Respondent did not receive those funds until September 26, 2003.

In Khanna, the lender wired \$423,450.79 to respondent's trust account to fund a refinancing. Khanna exercised his right of rescission for the loan, but not until after respondent had received the lender's funds. When, in June 2003, respondent discovered the funds in his trust account, he returned them to the lender via a trust account check. The following month, the lender demanded an immediate wire transfer of the funds. Unbeknownst to respondent, the lender had already negotiated his check when it made the demand. On July 31, 2003, respondent wired another \$423,450.79 to the lender. The lender did not return the overpayment until November 3, 2003.

In addition to the negligent misappropriations caused by the lack of proper reconciliations, respondent's recordkeeping was deficient in numerous other respects, in violation of R.1:21-6 and RPC 1.15(d).

Ordinarily, a reprimand is imposed for negligent misappropriation of client's funds and recordkeeping violations.

See, e.g., In re Blazsek, 154 N.J. 137 (1998); In re Zavodnick, 139 N.J. 607 (1995); In re Mitchell, 139 N.J. 608 (1995); In re Harrison, 139 N.J. 609 (1995); and In re Imperiale, 140 N.J. 75 (1995). Mitigating circumstances may lower the discipline to an admonition. See, e.g., In the Matter of Bette R. Grayson, Docket No. DRB 97-338 (May 27, 1998) (admonition imposed for negligent misappropriation and recordkeeping deficiencies; mitigation included attorney's full cooperation with ethics authorities, steps taken to correct deficiencies, and lack of prior discipline); and In the Matter of Philip J. Matsikoudis, Docket No. DRB 00-189 (September 25, 2000) (admonition imposed where attorney miscalculated fees in his favor and failed to pay a physician's lien, as a result of poor recordkeeping; mitigation included steps taken to overcome deficiencies, and respondent's use of his own personal funds to pay the physician's lien).

Here, respondent urges us to consider as mitigation the added pressure upon his law practice caused by his duties as the primary caregiver to his wife of thirty-four years, who has been chronically ill with very advanced diabetes. Respondent briefly outlined a heart-rending scenario in a July 19, 2004 letter to the OAE, stating in part as follows:

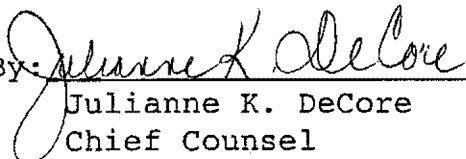
Second, I have for a period of time in excess of fifteen years been the primary care provider for my fifty-nine year old diabetic wife. While it would serve no purpose to chronicle the more than fifty emergency room visits to which I have been subjected over the course of a thirty-four year marriage, an appreciation of her present condition, one that has existed since February 2002, is what I would ask that you recognize. In that month, she lost her second leg (below the knee) putting her in a wheel chair, had quadruple by-pass surgery, had complete renal kidney failure resulting in three days a week of dialysis for the rest of her life, and lost control of her bodily functions. While my children assist me, I must daily test her blood sugar level, give her insulin, change and dress her, and prepare her meals. Three days a week (Tuesday, Thursday and Saturday) she must be taken to St. Barnabas Medical Center for her dialysis treatment. Due to her 'brittle' condition, she has diminished eyesight (she gave up driving in 1989) and recently her hearing capacity has been greatly reduced. We literally live in a relationship of nurse and patient rather than one of husband and wife and have existed in this manner for more than nine years.

Certainly, I am unable to undue [sic] the situations which your audit brought to light. All I seek is some understanding.

Under the circumstances, we determine that an admonition is appropriate discipline for respondent's misconduct. Chair Mary J. Maudsley did not participate.

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

Disciplinary Review Board
William J. O'Shaughnessy
Vice-Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

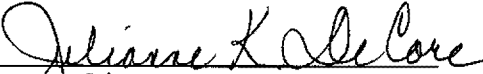
In the Matter of Richard J. Cohan
Docket No. DRB 04-272

Argued: November 18, 2004

Decided: December 17, 2004

Disposition: Admonition

Members	Disbar	Suspension	Admonition	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:			8			1


Julianne K. DeCore
Chief Counsel