

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-039

IN THE MATTER OF
ANTHONY T. COLASANTI
AN ATTORNEY AT LAW

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Decision

Argued: May 17, 2001

Decided: December 4, 2001

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

Dino D. Bliablias 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 stipulation of facts between respondent and the Office of Attorney Ethics ("OAE"), in which respondent admitted negligent misappropriation of client trust funds and recordkeeping violations, contrary to RPC 1.15(a) and (d) and R.1:21-6.

Respondent was admitted to the New Jersey bar in 1967. He maintains an office for the practice of law in West Caldwell, Essex County. He has no history of discipline.

On May 1, 1998 the Bank of New York notified the OAE of an April 29, 1998 overdraft in the amount of \$23,153.50 in the trust account of the law firm of Colasanti, Ermel & Casale, a partnership headed by respondent. In August 1998 the OAE conducted a select audit of the firm's attorney books and records, after the OAE deemed unsatisfactory respondent's explanation for the overdraft. The audit focused on respondent's conduct because he was the firm's managing partner and was solely responsible for the firm's recordkeeping duties. In addition, the majority of the trust account transactions reviewed related to respondent's clients. The firm disbanded in July 1998, just before the audit.

The audit was conducted by compliance auditor Karen J. Hagerman.¹ During the initial audit visit, Hagerman identified seven recordkeeping violations, including client ledger cards with debit balances and an absence of quarterly reconciliations. She also identified a negligent misappropriation of over \$90,000, which had existed for at least a year and a half. The shortage was caused by respondent's overdisbursement of funds in a client matter. Respondent was also unable to identify the amount of funds held for each client. Due to the poor state of the firms's trust account records, the OAE directed that respondent reconstruct them.

Hagerman's analysis of respondent's trust account records from July 1996 through September 1998 revealed that at least \$180,042.73 in client funds had been negligently misappropriated. The misappropriations occurred from before July 1996 through September

¹Hagerman's investigative report, with appendices and attachments, is incorporated into the stipulation.

1998 and, according to the stipulation, were caused by respondent's shoddy recordkeeping and inadequate assistance by his accountant. Specifically, respondent relied on inaccurate client ledger cards to disburse funds. The inaccuracy in the ledger balances was caused by several factors, including mathematical errors and failure to record trust account checks on the client ledger cards. In addition, the reconciliations prepared by the accountant were not in compliance with the recordkeeping requirements of R.1:21-6. For instance, the reconciliations were made only to the bank statements and not to the client ledgers. Respondent did not review the reconciliations, relying on the inaccurate client ledger balances to disburse funds.

Respondent also had a high volume of activity in the trust account. In 1997 the firm had average monthly deposits of \$932,137.50 and withdrawals of \$978,657.42. In Hagerman's view, respondent was unaware of the negative client balances because of the volume of activity in the trust account.

The above mentioned trust account overdraft in April 1998 occurred when respondent moved his trust account to Ramapo Bank. Respondent deposited new client trust funds into Ramapo Bank and disbursed the remaining client funds thought to be held in the Bank of New York. Due to respondent's poor recordkeeping and the inadequate assistance of his accountant, respondent was unaware of the negative client balances in the Bank of New York trust account.²

²Hagerman noted that, "due to the high volume of activity in the old [attorney trust account], it is very likely that, had the change of banks not been undertaken, the overdraft would not have

Respondent immediately covered the \$23,153.50 overdraft, after being notified of its occurrence in April 1998. Between that time and August 1998, when the OAE began its audit, respondent attempted to straighten out his accounts, with the help of his then accountant. It was not until August 1998, however, when the audit began, that respondent became fully aware of the recordkeeping errors in his trust account and of the inadequate work by his accountant. After the OAE suggested that respondent hire an accountant familiar with the requirements of R.1:21-6, he hired Pat Beene, who helped him reconstruct his records. Beene initially estimated a shortage of \$160,000, which amount respondent deposited into his trust account in September 1998. By February 1999, with Beene's assistance, respondent had identified all clients with negative balances. Respondent has retained Beene to reconcile his current trust account on a monthly basis.

* * *

The select audit revealed seven deficiencies in the maintenance of respondent's attorney account, as follows:

1. The trust account designation was improper [R.1:21-6(a)].
2. Client trust ledger sheets were not fully descriptive [R.1:21-6(b)(2)].
3. Client ledger cards had debit balances [R.1:21-6(c)].
4. A schedule of client accounts was not prepared and reconciled quarterly to the trust account bank statement [R.1:21-6(b)(8)].
5. Running cash balance was not kept in the trust account checkbook [R.1:21-6(c)].

occurred, and the deficit condition of respondent's trust account might have remained undetected."

6. Attorney funds held in the trust account were in excess of the amount necessary for bank charges [RPC 1.15(a)].

7. A separate ledger sheet was not maintained for each trust client [R.1:21-6(b)(2)].

Respondent's predecessor firm, Colasanti & Ermel, was the subject of a random audit conducted in December 1988.³ Five of the recordkeeping violations noted in 1988 were repeated in the 1998 audit. The record does not reveal whether the firm had prepared a certification attesting that the deficiencies had been corrected after the 1988 audit or whether respondent had been responsible for the firm's trust account recordkeeping in 1988.

* * *

Respondent acknowledged his responsibility for the cited recordkeeping deficiencies and consequent violations of R.1:21-6 and RPC 1.15(d). Respondent also admitted that the deficiencies and, in particular, his failure to perform the required reconciliations, resulted in the negligent misappropriation of \$180,042.73 in client trust funds, in violation of RPC 1.15(a). The OAE was satisfied that there was "insufficient" evidence to conclude that respondent had knowingly misappropriated client funds.

The stipulation set forth a number of mitigating factors: (1) respondent promptly replaced the initial overdraft of \$23,153.50; (2) immediately after the OAE's August 1998 audit, respondent complied with the instructions of that office and retained the services of an accountant to reconstruct the firm's trust account records; (3) in September 1998 respondent deposited \$160,000 into his trust account, the estimated shortage initially

³The stipulation mistakenly stated that the audit was conducted in May 1988.

calculated and, with the accountant's assistance, by February 1999 had identified all clients with negative balances; (4) respondent retained the services of an accountant to reconcile his trust account on a monthly basis; and (5) respondent has not been previously disciplined.

In aggravation, the stipulation pointed to (1) the 1988 random audit of respondent's predecessor firm, which should have alerted him to his recordkeeping responsibilities; (2) the substantial amount of the negligent misappropriation, \$180,042.73; and (3) the two-year period involved.

The OAE recommended the imposition of a reprimand.

* * *

Upon a de novo review of the record, we are satisfied that there is clear and convincing evidence that respondent violated RPC 1.15(a) and (d) and R.1:21-6. That respondent relied on his accountant's recordkeeping practices, which proved to be inadequate, is irrelevant. An attorney's recordkeeping responsibilities are non-delegable. In re Barker, 115 N.J. 30 (1989). See also In re Hofing, 139 N.J. 444 (1995) (reprimand where the attorney negligently misappropriated client funds by failing to adequately supervise his bookkeeper, who embezzled over \$460,000 of client funds); In re Mitchell, 139 N.J. 608 (1995) (reprimand where the attorney negligently misappropriated client funds by failing to maintain required records; the attorney had delegated responsibility for recordkeeping to her accountants, who were not aware of the requirements for attorneys); In re Stern, 118 N.J. 592 (1990) and In re Weiss, 118 N.J. 577 (1990) (six-month

suspension where the attorneys, partners in a two-attorney firm, were grossly negligent in supervising an accountant who reviewed their firm's records, resulting in the negligent invasion of client funds; mitigating factors included the attorneys' lack of prior discipline and the absence of financial injury to clients).

Generally, an admonition or a reprimand is the appropriate discipline for recordkeeping deficiencies and negligent misappropriation, even if accompanied by other minor misconduct. See, e.g., In the Matter of Joseph S. Caruso, Docket No. DRB 96-076 (May 21, 1996) (admonition imposed where the improper recording 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 the Matter of Bette R. Grayson, Docket No. DRB 97-338 (May 27, 1998) (admonition imposed where the attorney had deficient recordkeeping practices and failed to prepare quarterly reconciliations of client ledger accounts, resulting in the negligent misappropriation of client trust funds in eleven instances). More serious discipline was imposed in In re Goldstein, 147 N.J. 286 (1997). There, a reprimand was deemed appropriate where the attorney negligently misappropriated client funds as a result of recordkeeping deficiencies. A reprimand was also imposed in In re Liotta-Neff, 147 N.J. 283 (1997), where the attorney negligently misappropriated client funds after commingling personal and client funds.

Here, there is no question that respondent cooperated fully during the audit process. In addition, he heeded the advice of the OAE and retained an accountant who was familiar

with the requirements of R.1:21-6. He has continued to employ that accountant to reconcile his records on a regular basis. Furthermore, respondent replaced the missing funds as soon as the situation was brought to his attention.

On the other hand, it is also relevant that respondent's predecessor firm was the subject of a 1988 random audit, during which recordkeeping violations were found. The record does not delineate respondent's role in the financial recordkeeping for Colasanti & Ermel. Whatever role respondent played, undoubtedly he was aware of the 1988 audit and of the violations discovered. Therefore, he should have paid particular attention to his successor firm's accounting practices.

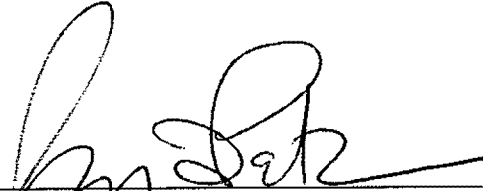
After balancing the mitigating and aggravating factors, we unanimously determined that a reprimand is sufficient discipline for respondent's ethics infractions. See In re Powell, 142 N.J. 426 (1995) (attorney reprimanded for committing recordkeeping violations, negligently misappropriating more than \$45,000 and advancing personal funds to clients in eight personal injury matters; like respondent, Powell deposited corresponding funds in his trust account immediately after being notified of the deficiency and took steps to ensure that his recordkeeping fully complied with the rule's requirements) and In re Barker, supra, 115 N.J. 30 (1989) (attorney publicly reprimanded for flagrant recordkeeping deficiencies, failure to supervise his part-time bookkeeper's work and failure to reconcile on a regular basis, all resulting in one instance of negligent misappropriation; mitigating factors were the lack of harm to any client, the attorney's immediate correction of the shortage with personal

funds, the isolated nature of the incident and the attorney's retention of an experienced bookkeeper).

One member did not participate.

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

By:



ROCKY L. PETERSON

Chair

Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

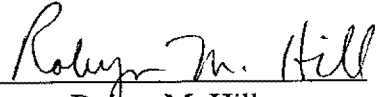
In the Matter of Anthony T. Colasanti
Docket No. DRB 01-039

Argued: May 17, 2001

Decided: November 19, 2001

Disposition: Reprimand

<i>Members</i>	<i>Disbar</i>	<i>Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Peterson</i>			X				
<i>Maudsley</i>			X				
<i>Boylan</i>							X
<i>Brody</i>			X				
<i>Lolla</i>			X				
<i>O'Shaughnessy</i>			X				
<i>Pashman</i>			X				
<i>Schwartz</i>			X				
<i>Wissinger</i>			X				
Total:			8				1

 11/26/01
 Robyn M. Hill
 Chief Counsel