

Book

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
DOCKET NO. DRB 97-245

IN THE MATTER OF :
 :
OTTO F. BLAZSEK, :
 :
AN ATTORNEY AT LAW :

 :

Decision

Argued: November 20, 1997

Decided: May 11, 1998

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

Frank A. Ferrante appeared on behalf of respondent.

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

This matter was before the Board based on a recommendation for discipline filed by the District XI Ethics Committee ("DEC"). The complaint filed by the Office of Attorney Ethics ("OAE") charged respondent with negligent misappropriation of client funds, in violation of RPC 1.15(a) (failure to safeguard client funds) and RPC 1.15(d) (failure to comply with the recordkeeping provisions of R.1:21-6). In his answer, respondent admitted recordkeeping violations, but denied misappropriation of client funds.

Respondent was admitted to the New Jersey bar in 1963 and maintains an office as a sole practitioner in Clifton, Passaic County. He has no history of discipline.

On October 12, 1984 respondent was the subject of a random audit of his attorney books and records, performed by the OAE. The audit uncovered trust account shortages of over \$5,800, as well as ten recordkeeping deficiencies. Respondent assured the OAE that all irregularities would be corrected. No disciplinary proceedings were instituted against him at that time.

* * *

By letter dated March 25, 1994, the presiding judge of the Special Civil Part - Superior Court, Passaic County, notified the OAE that, on a number of occasions, respondent's business account checks for filing fees had been returned for insufficient funds. The judge's letter prompted the OAE to conduct a select audit of respondent's trust and business accounts on April 19, 1994. The audit revealed that, as of March 31, 1994, respondent had a trust account shortage in the amount of \$31,461.12. A second reconciliation of respondent's trust account, undertaken after misdeposits were discovered in three client matters (Mingoia, Hannigan, and Peter, discussed below), showed that, as of June 30, 1994, respondent was out-of-trust by \$21,088.88. On July 22, 1994 respondent replaced the missing funds.

The shortages in respondent's trust account were caused by a number of separate transactions in which he made deposits to and disbursements from the wrong accounts and also failed to keep accurate records. The deficiencies arose in connection with the following matters:

1. Mirbahari: Respondent should have been holding \$15,500 in trust on account of Mirbahari. However, respondent received only \$6,000 in behalf of Mirbahari, which he improperly deposited into his business account. Respondent then disbursed \$9,500 to Mirbahari from his trust account, without first collecting the full amount, thereby invading other client funds. Approximately six months later respondent obtained the \$9,500 balance from the appropriate party and deposited it in his trust account, thereby curing the shortage in that account.

2. Ali: Respondent settled a case for \$1,000. He then disbursed to his client \$667 from his trust account without having deposited any corresponding funds in behalf of Ali.

3. Zakrewski and Dombayci: In these two separate real estate transactions, respondent disbursed funds from his trust account without first obtaining sufficient funds from the clients (\$2,195 from Zakrewski and \$590.09 from Dombayci). According to the OAE, respondent claimed that he intended to cover these advances with earned legal fees that he believed had been left in his trust account.

4. Chelsea's Liquors and Hussain: In Chelsea's Liquors respondent deposited \$5,000 to his trust account, but did not properly credit that deposit. Contemporaneously, respondent

disbursed \$5,000 in Hussain without first depositing equivalent funds in his trust account. Thus, respondent invaded the Chelsea's Liquors funds through the Hussain disbursement.

5. Mingoia and Hannigan: Respondent deposited funds in these matters (\$5,830 in Mingoia and \$8,500 in Hannigan) into an inactive trust account. Thereafter, he disbursed funds on behalf of the clients from his active trust account.

6. Peter: Respondent mistakenly deposited \$7,500 in trust funds for Peter to a realty account that was maintained separately from his law practice. Responsibility for reconciling that account rested with respondent's non-lawyer realty partner. Thereafter, respondent disbursed funds on behalf of Peter from his trust account, thereby invading other client funds.

* * *

On October 22, 1992 respondent's trust account had a balance of \$12,470.08. On that date the Internal Revenue Service ("IRS") levied on \$12,400 contained in the trust account. Also, on or about October 22, 1992 respondent's trust account was debited for checks amounting to \$3,503, resulting in overdrafts totaling \$3,493.92. Although the IRS levy was reversed on October 30, 1992, respondent's trust account remained overdrawn in the amount of \$3,264.15. As a result of other disbursements and a service charge, on October 30, 1992 respondent's trust account was overdrawn by \$3,892.18. On November 18, 1992, following receipt of the bank's notification of the trust account shortage, respondent deposited \$5,000 in personal funds to remedy the shortage. Respondent, however, did not reconcile the trust account records at the time.

* * *

In addition to respondent's derelictions with regard to the above matters, respondent's attorney trust and business account recordkeeping contained a number of deficiencies, as found by the DEC:

- A. The Respondent did deposit to his business account monies which should have been deposited to his trust account; the Respondent did misapply trust funds held in his trust account;
- B. The Respondent did co-mingle client's trust funds without proper designation and did apply certain client trust funds to other non-related client disbursements;
- C. The Respondent did fail to correct overdraft trust fund balances, cure record keeping deficiencies and failed to reconcile various client trust fund monies between January 1, 1992 through March 31, 1994.
- D. Respondent never reconciled his trust ledgers and checkbook to his trust account monthly bank statements on a quarterly basis (nor at any time);
- E. Respondent did not maintain receipt journals for either his trust account nor [sic] his business account;
- F. The Respondent did not maintain disbursement journals for his trust account nor [sic] his business account;
- G. The Respondent did not maintain an appropriate ledger book for each trust client;
- H. The Respondent did not properly designate his attorney business account at the Valley National Bank;
- I. On two occasions, the Respondent did draw two trust account checks to cash, to wit, trust account check #2033 and #2128. However, no

evidence was adduced at hearing nor did the OAE proffer any allegation, that either of those checks were drawn to the Respondent's own use or benefit.

By way of explanation for his recordkeeping irregularities, respondent alluded to personal problems from 1990 through 1992, specifically, a divorce and unspecified difficulties with his son. However, respondent produced no evidence that he was incapable of functioning properly during the time in question.

The DEC found that respondent had negligently misappropriated client trust funds, in violation of RPC 1.15(a). The DEC also found that respondent had violated RPC 1.15(d), in that he failed to comply with the recordkeeping requirements of R.1:21-6.

The DEC recommended a reprimand for respondent's violations of RPC 1.15(a) and (d) and R. 1:21-6.

* * *

Upon a de novo review of the record, the Board is satisfied that the conclusions of the DEC are fully supported by clear and convincing evidence. In fact, respondent admitted his recordkeeping violations. Hence, the only remaining issue is the appropriate quantum of discipline.

Although the OAE recommended either a three - or a six-month suspension, the Board was not persuaded that a period of suspension is required. In a recent case, In re Fucetola, 147 N.J. 255 (1997), the attorney and the OAE entered into a stipulation of facts centering on the attorney's failure to comply with the recordkeeping requirements of R1:21-6, as a

result of which client funds were negligently misappropriated on three occasions. The attorney had been previously privately reprimanded for endorsing a settlement check in his client's name without the client's authorization. He had also been publicly reprimanded for inadequately maintaining his attorney trust account. In determining to impose only a reprimand, the Board considered both that the attorney had taken substantial steps to bring his records into compliance with the rules, and that the OAE was confident in the attorney's ability to properly maintain his records. In addition, the Board noted that, although the attorney had been disciplined for virtually identical misconduct, that misconduct had occurred over ten years earlier. Since that time, the attorney had made efforts to comply with the recordkeeping rules. These efforts, however, had been thwarted by intervening factors over which the attorney had no control, such as the illness of his wife, who had been acting as his bookkeeper, the serious illness of his subsequent bookkeeper, a serious automobile accident involving the attorney as well as his own vision problems. But See In re Waters-Cato, 139 N.J. 498 (1995) (three-month suspension for failure to maintain the required trust and business account records. Audits were conducted on seven occasions, from January 1991 through June 1992, disclosing the attorney's improper recordkeeping practices; as of the date of the Board hearing, the attorney was still not in compliance with the recordkeeping requirements; prior private reprimand for misconduct in connection with three real estate transactions).

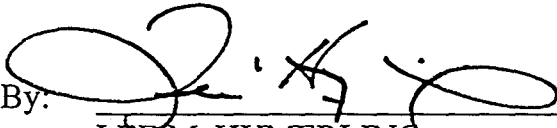
Here, respondent's accounting deficiencies are more akin to those found in Fucetola.

Although fewer client matters were at issue in Fucetola, there, the attorney had been previously disciplined for recordkeeping violations. In addition, as in Fucetola, the first examination of respondent's attorney books and records had taken place ten years earlier. Moreover, this matter clearly does not rise to the level of misconduct found in Waters-Cato, where the attorney records were still not in compliance with the rules after seven audits. In addition, this respondent now understands his recordkeeping responsibilities and has taken action to conform his accounting practices to the required level.

Accordingly, the Board unanimously determined that a reprimand is sufficient discipline for respondent's ethics infractions. The Board also determined to require respondent to submit, for a period of three years, quarterly certified statements prepared by a certified public accountant approved by the OAE, attesting that respondent's attorney books and records are in full compliance with the court rules. One member did not participate.

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

Dated: 5/11/18

By: 

LEE M. HYMERLING
CHAIR
DISCIPLINARY REVIEW BOARD

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Otto Blazsek
Docket No. DRB 97-245

Argued: November 20, 1997

Decided: May 11, 1998

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling			x				
Zazzali			x				
Brody			x				
Cole			x				
Lolla			x				
Maudsley			x				
Peterson							x
Schwartz			x				
Thompson			x				
Total:			8				1

Robyn M. Hill 5/21/98
Robyn M. Hill
Chief Counsel