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SUPREME COURT OF NEW JERSEY

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July 29, 2016

Mark Neary, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: In the Matter of Douglas M. Long
Docket No. DRB 16-159
District Docket No. XIV-2012-0301E

Dear Mr. Neary:

The Disciplinary Review Board has reviewed the motion for discipline by consent (reprimand to three-month suspension) filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion. In the Board's view, a reprimand is the appropriate discipline for respondent's violations of RPC 1.15(a) (failure to safeguard property of clients or third parties and negligent misappropriation); RPC 1.15(d) and R. 1:21-6 (recordkeeping); and RPC 5.3(a) and (b) (failure to supervise a nonlawyer assistant).

Specifically, on March 8, 2011, OAE Assistant Chief of Random Audits Mary E. Waldman conducted a random audit of Long Marmero & Associates, LLP (the firm). The audit period spanned from April 1, 2009 to June 30, 2012. During this period, the firm had delegated its recordkeeping responsibilities to Colleen Redman, a nonlawyer employee, who maintained the accounting records for all of the firm's accounts, using QuickBooks.

Respondent was the managing partner in charge of the firm's finances and had supervisory responsibility over Redman.

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Respondent neither instructed Redman in the recordkeeping and safeguarding requirements of both RPC 1.15 and R. 1:21-6, nor reviewed her work. Prior to establishing the firm, he had worked in an engineering firm and performed limited in-house counsel work. Thus, he was, himself, unfamiliar with trust accounting requirements and practices.

Waldman's audit revealed that, during the audit period, a total of \$199,255.42 was applied from client funds on deposit in the attorney trust account to pay firm liabilities, as follows:

- \$69,998.01 transferred to the business account to cover overdrafts;¹
- \$27,025 ordinary compensation to Douglas M. Long;
- \$35,662.60 used for firm payroll in September 2010;
- \$450 transfer to firm credit card account;
- \$28,000 repayment of a loan to the firm by Jeff Long, respondent's brother, of Pattison Sports Group;
- \$38,111.81 net overdisbursements of funds on deposit.

The audit further revealed that, during the audit period, a total of \$195,255.42 was "reimbursed" to the attorney trust account, as follows:

- \$105,618.87 representing numerous transfers from the business account to the trust account;
- \$43,104.66 earned fees deposited to the trust account to cover payroll and deficits;
- \$12,000 transfer from payroll account;

¹ A total of eleven overdrafts had gone unreported by respondent's bank to the OAE. The bank later explained to the OAE that, through no fault or action of respondent, the trust account had been coded in such a way as to cause overdrafts to be paid automatically, without appearing on the list of overdrafts to be reviewed and reported by the bank. The bank later resolved the issue within its system.

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- \$8,570 transfers from credit card account;
- \$15,000 loan from Jeff Long;
- \$11,200 cash deposits from partners.

During the audit, the OAE identified the following recordkeeping deficiencies and related violations, to which respondent stipulated:

- A. A schedule of clients' ledger accounts not prepared and reconciled monthly to the trust account bank statement [R. 1:21-6(c)(1)(H)];
- B. Client ledger cards not maintained [R. 1:21-6(c)(1)(B)];
- C. Deposit slips not properly retained [R. 1:21-6(c)(1)];
- D. Client matters with debit balances [R. 1:21-6(d)];
- E. Trust receipt journals not fully descriptive [R. 1:21-6(c)(1)(A)];
- F. Trust disbursement journals not fully descriptive [R. 1:21-6(c)(1)(A)];
- G. Business receipt journals not fully descriptive [R. 1:21-6(c)(1)(A)];
- H. Business disbursement journals not fully descriptive [R. 1:21-6(c)(1)(A)];
- I. Business account frequently overdrawn [R. 1:21-6(c)];
- J. Electronic trust account transfers made without proper authorization [R. 1:21-6(c)(1)(A)];
- K. Improper image processed trust account checks [R. 1:21-6(b)];
- L. Improper image processed business account checks [R. 1:21-6(b)];
- M. Checks disbursed against uncollected funds [R. 1:21-6, RPC 1.15(a) and ACPE Opinion 454].

As a result of the multiple and ongoing recordkeeping violations committed by Redman, the firm failed to safeguard funds held in trust on behalf of five clients. These clients' funds were negligently misappropriated to cover overdrafts in the firm's business account, to cover the firm's payroll, to make payments toward the firm's credit card, and to repay private loans. Hence, through the actions of Redman, and because

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respondent had signatory authority on all of the firm's accounts, as its managing partner, he violated RPC 1.15(a) and (d).

Additionally, respondent violated RPC 5.3(a) and (b) because, as managing partner of the firm, he was Redman's supervisor. Respondent failed in his supervisory capacity by delegating the firm's financial management to Redman, without reviewing her work or the status of the firm's finances.

Failure to safeguard funds for clients or third persons typically results in an admonition, even when accompanied by other non-serious infractions. See, e.g., In the Matter of Michael P. Otto, DRB 08-294 (February 26, 2009) (attorney's failure to oversee law firm trust account enabled law partner to repeatedly misappropriate trust account funds, a violation of RPC 1.15(a); recordkeeping violations also present) and In the Matter of Patrick D. Martini, DRB 04-440 (February 22, 2005) (attorney received an \$8,500 down payment check from a client, but failed to ensure that it was deposited in his trust account, enabling an office visitor to steal the check and cash it, in violation of RPC 1.15(a)).

Generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., In re Cameron, 221 N.J. 238 (2015) (after the attorney had deposited \$8,000 into his trust account for the pay-off of a second mortgage on a property that his two clients intended to purchase, he disbursed \$3,500 to himself, representing legal fees that the clients owed him for prior matters, leaving in his trust account \$4,500 for the clients, in addition to \$4,406.77 belonging to other clients; when the transaction failed, the attorney, who had forgotten about the \$3,500 disbursement to himself, issued an \$8,000 refund to the clients, thereby invading other clients' funds; a violation of RPC 1.15(a); upon learning of the overpayment, the attorney collected \$3,500 from one of the clients and replenished his trust account; a demand audit of the attorney's books and records uncovered "various recordkeeping deficiencies," a violation of RPC 1.15(d)); In re Wecht, 217 N.J. 619 (2014) (attorney's inadequate records caused him to negligently misappropriate trust funds, violations of RPC 1.15(a) and RPC 1.15(d)); and In re Arrechea, 208 N.J. 430 (2011) (negligent misappropriation of client funds in a default matter; the attorney also failed to promptly deliver funds that a client was entitled to receive and violated R. 1:21-6 by writing trust

account checks to himself and making cash withdrawals from his trust account; although in a default matter, the otherwise appropriate level of discipline is enhanced, a reprimand was viewed as adequate in this case because of the attorney's unblemished professional record of thirty-six years and his cardiac and serious cognitive problems).

Attorneys who fail to supervise their nonlawyer staff in financial duties typically are admonished or reprimanded. See, e.g., In re Bardis, 210 N.J. 253 (2012) (admonition; as a result of attorney's failure to reconcile and review his attorney records, his bookkeeper was able to steal \$142,000 from his trust account, causing a shortage of \$94,000; mitigating factors were the attorney's deposit of personal funds to replenish the account, numerous other corrective actions, his acceptance of responsibility for his conduct, his deep remorse and humiliation for not having personally handled his own financial affairs, and lack of a disciplinary record); In re Mariconda, 195 N.J. 11 (2008) (admonition for attorney who delegated his recordkeeping responsibilities to his brother, a paralegal, who then forged the attorney's signature on trust account checks and stole \$272,000 in client funds); In the Matter of Brian C. Freeman, DRB 04-257 (September 24, 2004) (attorney admonished for failing to supervise his paralegal, who also was his client's former wife; the paralegal forged a client's name on a retainer agreement, a release, and two settlement checks; the funds were never returned to the client; mitigating factors included the attorney's clean disciplinary record and the steps he took to prevent a reoccurrence); In the Matter of Lionel A. Kaplan, DRB 02-259 (November 4, 2002) (attorney admonished for failure to supervise his bookkeeper, which resulted in recordkeeping deficiencies and the commingling of personal and trust funds; mitigating factors included the attorney's cooperation with the OAE, including entering into a disciplinary stipulation, his unblemished thirty-year career, the lack of harm to clients, and the immediate corrective action that he took); In re Deitch, 209 N.J. 423 (2012) (reprimand; as a result of attorney's failure to supervise his paralegal-wife and poor recordkeeping practices, \$14,000 in client or third-party funds invaded; the paralegal-wife stole the funds by negotiating thirty-eight checks issued to her by either forging the attorney's signature or using a signature stamp; no prior discipline); In re Murray, 185 N.J. 340 (2005) (attorney reprimanded for failure to supervise non-attorney employees, which led to the unexplained misuse of client trust funds and to negligent misappropriation; the attorney also committed recordkeeping violations); In re Riedl,

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172 N.J. 646 (2002) (attorney reprimanded for failing to supervise his paralegal, allowing the paralegal to sign trust account checks, and displaying gross neglect in a real estate matter by failing to secure a discharge of mortgage for eighteen months after it was satisfied); and In re Bergman, 165 N.J. 560 (2000) and In re Barrett, 165 N.J. 562 (2000) (companion cases; attorneys reprimanded for failure to supervise secretary/bookkeeper/office manager, who embezzled almost \$360,000 from the firm's business and trust accounts and from a guardianship account; the attorneys cooperated with the OAE, hired a CPA to reconstruct the account, and brought their firm into full compliance with the recordkeeping rules; a bonding company reimbursed the losses caused by the embezzlement).

The OAE relied on two cases, In re Librizzi, 117 N.J. 481 (1990) and In re James, 112 N.J. 580 (1988), to support the imposition of a three-month suspension. In Librizzi, an attorney with a long, unblemished professional career was suspended for six months for grossly negligent recordkeeping practices that caused the misappropriation of client funds. Essentially, the attorney "had no record-keeping of his trust account" and had no in-house bookkeeper or outside accountant to review his accounts and records. In re Librizzi, supra, 117 N.J. at 492. As of the date of the OAE's audit, he had not reconciled his trust account for a period of twelve years and had not even opened the monthly trust account statements he received from the bank during those years. Although, as in this matter, no client had ever complained or sustained a monetary loss from attorney's recordkeeping practices during that period, Librizzi had been notified by the bank, on at least one occasion, that a check against which he had drawn a fee had been dishonored. He made no attempt, however, to return his fee to replenish the trust account for a period of two years, even though he had recovered the funds from his client's father "in dribs and drabs." Id. at 487. While concluding that the record did not clearly and convincingly establish that Librizzi had engaged in knowing misappropriation, the Court nevertheless found his misconduct "extremely serious" and his recordkeeping "totally inadequate," justifying the imposition of a six-month suspension. Id. at 492-493.

In James, an attorney with an otherwise unblemished record was suspended for three months for using clients' trust account funds to advance costs of other clients and to pay litigation expenses and payroll taxes, resulting in his trust accounts being "out of trust." The attorney had completely abdicated

responsibility for the bookkeeping to his secretary. However, on several occasions, the secretary specifically advised him that the balance of the trust account had reached the level where outstanding client obligations could not be satisfied. Rather than review his books to discover the reason for the deficiency, James simply transferred funds from his business account to his trust account. Moreover, he "unhesitatingly" satisfied numerous financial obligations on behalf of two clients without first making sure that sufficient funds had been deposited in those client matters to cover the disbursements. In re James, supra, 112 N.J. at 587. The Court noted that the attorney's "accounting system, which had been in place for 24 years without incident, in all likelihood would have continued indefinitely had it not been interrupted by the Random Audit Program." Ibid. While concluding that the record did not clearly and convincingly establish that James had engaged in knowing misappropriation, the Court nevertheless found that he had been grossly negligent in his recordkeeping responsibilities, resulting in the negligent misappropriation of client funds. Like respondent, James was extremely active in his community, both politically and professionally, and had a good reputation for trustworthiness and professionalism. Id. at 588. Thus, the Court determined that, in the context of James' good character, his unblemished ethics history, and the lack of injury to any client, a three-month suspension sufficiently addressed his misconduct. Id. at 591.

Although both Librizzi and James appear factually similar, both of those attorneys' practices were far more neglectful than that of respondent. Unlike respondent in this case, both James and Librizzi had specific information indicating that client funds were in jeopardy. Yet, both ignored that information and continued in their neglectful practices. Here, respondent had no such information. Rather, the evidence indicates that Redman, unaware of the recordkeeping requirements of R. 1:21-6 and the precepts of RPC 1.15, moved money between the accounts to ensure that both firm and client obligations were met. Never did she indicate to respondent that she was engaging in these practices, that client funds were being used to meet firm expenses, or that the trust account had reached a level such that client obligations could not be met. Nor did respondent's outside accountant ever alert him to any issue with his recordkeeping or the state of his accounts. Thus, respondent had no reason to question the integrity of the funds in his accounts.

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Therefore, the Board determined that respondent's violations should be met with either a reprimand or a censure. However, the Board considered significant mitigation that justified the imposition of the lesser discipline. Specifically, no client suffered an actual loss; no client filed a grievance against respondent; no money was paid to the firm beyond the ordinary legal fees to which it was ultimately entitled, such fees being fair and reasonable, as noted in the stipulation; respondent did not receive any improper personal gain from the transactions alleged in the complaint; respondent acted in good faith at all times; and any improper acts or omissions by respondent were the result of inadvertence or mistake and were not knowing, intentional, or willful. Further, neither the bank, nor the firm's outside accountants ever informed respondent that the firm's recordkeeping practices were improper or that the trust account had experienced overdrafts.

Moreover, counsel for respondent submitted multiple letters attesting to his good character, as evidenced by his longstanding community involvement and charitable work. Specifically, the Board reviewed letters from organizations including Steered Straight, an entity dedicated to education and awareness, for parents and children, of the dangers of the heroin trade; Bianca's Kids, an organization that fulfills the wishes of children in need; the Cumberland County chapter of the NAACP; Llet Me Finish, a nonprofit organization for stutterers; and the Juvenile Diabetes Research Foundation. Other letters from clients, two local mayors, and a pastor, also attested to the good character and integrity of respondent. Although the Board includes only a brief description of these letters, it is clear that respondent has made extraordinary contributions to his community. For instance, the firm was instrumental in bringing together Backpacks for Kids with Bianca's Kids to donate nearly 400 backpacks and school supplies to needy children in Vineland, New Jersey. Further, since 2012, the firm has represented, on a pro bono basis, the father of a twelve-year-old murder victim in numerous matters related to his daughter's murder. These are just a few of the many examples of the types of service that respondent provides to his community.

Additionally, the Board considered respondent's relative inexperience with law firm accounting. As noted, prior to establishing the firm, respondent worked for an engineering company and performed limited in-house counsel work. Thus, he had no experience or involvement with trust accounting or recordkeeping. In addition, on learning of his recordkeeping

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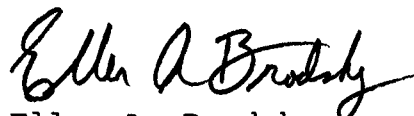
deficiencies, respondent immediately followed the OAE's recommendation and attended classes on trust accounting, along with Redman, and has taken other measures to correct the firm's practices. The Board further considered the passage of time since the conclusion of the OAE's audit. Indeed, the firm has been operating in compliance for more than three years since the OAE's audit. Thus, the Board does not view the public as at risk. Finally, the Board took into consideration respondent's unblemished career of seventeen years.

The Board, thus, determined that, under the totality of the circumstances, respondent's conduct warrants a reprimand.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, undated;
2. Stipulation of discipline by consent, dated April 15, 2016;
3. Affidavit of consent, dated April 7, 2016;
4. Ethics history, dated July 29, 2016.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

Enclosures

EAB/lg

c: Bonnie C. Frost, Chair (w/o encl.)
Disciplinary Review Board (via e-mail)
Charles Centinaro, Director (w/o encl.)
Office of Attorney Ethics
Jason D. Saunders, Deputy Ethics Counsel (w/o encl.)
Office of Attorney Ethics
K. Roger Plawker, Esq., Counsel for Respondent (w/o encl.)