SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-029
District Docket No. XIV-2014-0336E

IN THE MATTER OF	:
YANA SHTINDLER	:
AN ATTORNEY AT LAW	:

Decision

Argued: June 16, 2016

Decided: September 29, 2016

Andrea R. Fonseca-Romen appeared on behalf of the Office of Attorney Ethics.

Kim D. Ringler 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 on a motion for reciprocal discipline, filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14(a), following respondent's one-year suspension in New York, which took effect on May 17, 2013.[1] The

[1] According to respondent's counsel, respondent reported her suspension to the OAE on May 23, 2013. The OAE filed the motion for reciprocal discipline on January 29, 2016.

Supreme Court of New York, Appellate Division, Second Judicial Department found respondent guilty of ethics violations equivalent to New Jersey's RPC 1.15(a) (failure to safeguard funds), RPC 1.15(d) (recordkeeping violations), RPC 5.3 (failing to properly supervise a nonlawyer assistant), RPC 8.1(a) (knowingly making false statements of material fact in connection with a disciplinary matter), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), RPC 8.4(d) (conduct prejudicial to the administration of justice), and R. 1:21-6(c)(1)(A) (allowing only admitted attorneys to be authorized trust accounts signatories).[2]

The OAE recommended that we impose the same quantum of discipline imposed in New York, but took no position on whether the one-year suspension should be prospective or retroactive. For the reasons expressed below, we agree with the OAE's recommendation, and determine that the suspension be imposed retroactively to May 17, 2013, the effective date of respondent's New York discipline.

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[2] Although respondent was also found guilty in New York of violating N.Y. RPC 8.4(h) (engaging in any other conduct that adversely reflects on the lawyer's fitness as a lawyer), there is no equivalent rule in New Jersey.

Respondent was admitted to the New Jersey and New York bars in 2001. At the relevant time, she maintained a law office in New York.

Respondent has no history of discipline in New Jersey. However, she is currently administratively ineligible to practice law, based on non-compliance with her Continuing Legal Education requirements. Respondent's disciplinary history in New York consists of two letters of caution and a letter of admonition.

On March 8, 2011, the Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts of the Supreme Court of New York, Appellate Division, Second Judicial Department filed a seven-charge petition against respondent. Thereafter, respondent filed an answer admitting all of the allegations of the petition and requesting that any discipline imposed "be tempered" by the mitigating evidence she intended to present at the October 13, 2011 hearing, before the special referee.

The ethics hearing consisted of the submission of the transcript of respondent's sworn testimony at the January 24, 2011 investigative hearing, and of mitigation. On December 28, 2011, the special referee issued a report sustaining all seven charges of professional misconduct. On April 17, 2013, the Appellate Division issued an opinion and order, which granted

the grievance committee's motion to confirm the special referee's report sustaining the charges against respondent. The facts, derived from the special referee's report, the Appellate Division opinion and order, and respondent's testimony at the investigative hearing, follow.

The first charge alleged that respondent failed to safeguard escrow funds entrusted to her as a fiduciary in connection with her representation of the lender in a January 10, 2007 transaction to refinance real property belonging to Michael Sery. The lender deposited approximately $892,000 in respondent's Citibank escrow account on Sery's behalf. Respondent was required to hold $16,386 of those funds in escrow until she received proof that a mechanic's lien on the premises had been discharged or released. In June 2008, respondent's office received proof that the lien had been released. However, prior thereto, by October 2007, the $16,386 had been depleted from the escrow account.

Respondent explained that, in June 2008, when she received the notice of release of lien, she had begun to deal with serious health issues, described below, and was in the office only once or twice a week.

Respondent admitted that she failed to safeguard the escrowed funds. She maintained that her paralegal, Rita Vayman,

stole approximately $25,000 of escrow funds from a Citibank escrow account that respondent used solely for real estate closings. Respondent typically deposited the funds from real estate transactions into the escrow account, then immediately disbursed the funds following the closing. At some point, respondent improperly gave Vayman signatory authority on the escrow account to enable Vayman to appear at real estate closings in respondent's place. Aggravating that misconduct, respondent failed to make and keep the appropriate entries in the escrow account concurrent with the transactions, and failed to reconcile the accounts. Respondent admitted that she had not looked at the actual checks and statements for the transactions in which Vayman was involved. She looked only at the disbursements sheets and the journals Vayman prepared, which detailed the name of the bank, the transaction number, and to whom the funds were disbursed.

Respondent was not aware that Vayman had taken the funds until she received Sery's grievance. She admitted that, if she had reviewed her records, she potentially could have avoided the lawsuit that Sery ultimately filed against her for the return of the escrow funds.

Once respondent discovered the theft, she did not report Vayman to the police. Rather, she questioned Vayman about it.

Because respondent was aware that Vayman had a child and that Vayman's husband was very ill, respondent could not bring herself to report Vayman to the police. At the time of the New York disciplinary hearing, Vayman had repaid a portion of the funds that she had taken from respondent's escrow account.

The second charge alleged that respondent failed to maintain a ledger book or similar records of deposits into and withdrawals from her attorney escrow account. She failed to maintain records showing the source of funds, charges, or withdrawals from the account, and the names of persons for whom funds were held or to whom they were disbursed.

Charge three alleged that respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, based on misrepresentations she had made to Sery and his attorney. As of June 2008, respondent was required to release $16,386 that had been held in escrow for Sery. Between June 2008 and June 2010, Sery and his attorney made numerous demands of respondent to release the funds. In response to their demands, respondent led Sery and his attorney to believe that she continued to hold the funds in escrow when she knew, or should have known, that Sery's funds were no longer in the escrow account.

Charge four alleged that respondent knowingly made false or misleading statements to the grievance committee. After

receiving a copy of Sery's "complaint" from the grievance committee, respondent stated in her answer, that, when she communicated with Sery and his attorney, she had "explained on several occasions the reasons for the delay" in releasing the funds. However, respondent never explained to either of them that the reason for the delay was that the funds had been depleted by 2007.

According to respondent, she did not pay attention to the complaint Sery filed for the return of his funds because, at the time, it was not important to her. She believed that the lawsuit had been filed against the wrong entity, and that the title company, not she, was holding the funds in escrow. Respondent further was not concerned about the complaint because her name had been misspelled on it, the title company had ceased doing business, and the loan had been sold to another bank. Respondent conceded that, had she checked her records, she would have learned that the funds, indeed, had been in her escrow account.

Respondent maintained that she did not begin looking into the matter until she received the ethics complaint. Up until that time, she assumed that it was Sery's and his lawyer's responsibility to ascertain the location of the funds. When respondent finally looked at her records, she discovered that Vayman had stolen the funds.

Charge five alleged that, around September 2009, a default judgment was entered against respondent for $18,256.44. After she received a copy of Sery's disciplinary complaint, she entered into a settlement to pay him $16,386, conditioned on her receiving written proof that Sery had withdrawn his grievance complaint. This count, therefore, alleged that respondent improperly conditioned her payment of funds owed to Sery on the withdrawal of his complaint to the grievance committee.

Charge six alleged that respondent failed to adequately supervise her paralegal. From January 2007 through 2008, respondent authorized Vayman to issue and sign checks from her escrow account. On January 10, 2007, respondent delegated her responsibility to Vayman to attend the Sery refinance closing. After the closing, respondent failed to review the documents and checks Vayman had prepared in connection with the closing.

Finally, charge seven alleged that respondent improperly authorized Vayman, a nonlawyer, to act as a signatory on her escrow account.

As noted previously, respondent's July 7, 2011 answer admitted the allegations in the petition.

At the hearing before him, the special referee found that respondent presented "extraordinary personal and medical challenges." His report noted that respondent was born in what

is now Uzbekistan; immigrated to the United States in 1991; attended St. John's University as an undergraduate, and New York Law School in the evenings while working full-time as a paralegal; and, after graduation, worked for two law firms. Thereafter, respondent entered into a partnership with another attorney, which lasted several months, and then opened her own solo practice focusing primarily on real estate and immigration matters.

In 2008, respondent was diagnosed with cancer and was treated with chemotherapy, which caused serious side effects. Later, she underwent surgery related to the cancer. Although she continued with chemotherapy treatment, cancer was detected in other areas, requiring additional surgery. Respondent had been subjected to regular body scans and blood testing and, as of the time of the New York hearing, was awaiting additional surgery.

Respondent did not attribute her misconduct to her medical problems, acknowledging that she was not ill at the time of the Sery transaction. She remarked, however, that since receiving the diagnosis, she made her health and family a priority, which made it difficult to concentrate on her work and legal obligations.

The special referee observed that respondent had presented "strong character evidence" demonstrating that she was known for

her honesty, integrity, conscientious adherence to ethical standards, competence, diligence, and reliability. He noted that she had wound down her law practice and no longer took on new clients. Rather, she worked as a divorce mediator, scheduling around her medical appointments and treatments. At the investigative hearing, respondent also testified that she performed "legal work" for her husband, who owns two pharmacies: one in New Jersey, the other in the Bronx. She planned to continue practicing health care law, if her health permitted it. She did not intend to practice transactional law in the future.

The special referee concluded that respondent's actions were aberrational and determined that her otherwise good character and physical health warranted significant weight as mitigation.

In imposing a one-year suspension, the Appellate Division considered respondent's ethics history, two letters of caution and a letter of admonition, as an aggravating factor. The court also considered the mitigating factors: respondent's remorse, her general reputation as an ethical and honest attorney, and her payment of full restitution to Sery. The court noted respondent's admission that, had she timely reviewed her attorney bank accounts, she could have uncovered her paralegal's theft of funds. The court, thus, underscored that respondent

"abdicated her responsibility in the most fundamental fashion – she made her paralegal a signatory to her attorney escrow account, she did not supervise or review the subject transaction, and she did not keep proper records, all of which she conceded was wrong."

The OAE recommended that we impose the same discipline imposed in New York, based on respondent's violations in New York, which equate to New Jersey's RPC 1.15(a), RPC 1.15(d), RPC 5.3(a), RPC 8.1(a), RPC 8.4(c), RPC 8.4(d), and R. 1:21-6(c)(1)(A).

The OAE relied on a number of cases in making its recommendation, including the following: In re Stransky, 130 N.J. 38 (1992) (one-year suspension for attorney who failed to supervise a nonlawyer employee by abdicating his non-delegable fiduciary responsibilities for client trust funds to his secretary/bookkeeper wife by improperly designating signatory power to her; his wife then misappropriated trust account funds and diverted audit and temporary suspension notices from his attention; he also engaged in recordkeeping improprieties); In re Brown, 218 N.J. 387 (2014) (censure by consent for attorney who failed to reconcile his attorney trust account and to supervise a nonlawyer (his paralegal/bookkeeper), who forged checks and conducted real estate closings without the attorney's

knowledge, in most cases in furtherance of a mortgage fraud scheme to which she eventually pleaded guilty; the attorney also made misrepresentations on HUD-1s in two matters, was guilty of gross neglect and pattern of neglect, and negligently misappropriated trust funds; in aggravation, we considered that the improprieties could have been avoided if the attorney had paid close attention to his accounting responsibilities; mitigation included the attorney's ready acknowledgement of wrongdoing by entering into a stipulation, and his full cooperation with law enforcement authorities investigating his employee); and In re Deitch, 209 N.J. 423 (2012) (reprimand for attorney who failed to supervise a nonlawyer employee, failed to safeguard trust funds, and engaged in recordkeeping violations; the attorney failed to supervise his paralegal/wife and failed to comply with the recordkeeping rules, which enabled his wife to misappropriate $14,400 in client and third-party trust account funds; he also improperly gave his wife access to his trust and business accounts, trust account checks, and his signature stamp; his wife also overcharged parties in hundreds of real estate closings, over a five-year period, totaling approximately $124,000; mitigation included the attorney's lack of a disciplinary record in a twenty-year career, full cooperation with ethics investigators, swift action in demanding

that his wife return the trust funds and replenish the account, and his efforts to reimburse clients the amounts they were overcharged).

The OAE emphasized that respondent had abdicated her responsibilities to her paralegal for respondent's own convenience and that her decision to do so caused a three-and-a-half-year delay in her discovery of the theft. The OAE compared respondent's conduct to that of the attorney in Stransky because respondent, like Stransky, created a situation in which her paralegal had complete access and control over funds that respondent had an ultimate and non-delegable duty to safeguard. Thus, the OAE reasoned that the totality of respondent's misconduct justified "heightened discipline," a one-year suspension.

Respondent's counsel agreed that a one-year suspension was appropriate for respondent's misconduct. However, counsel urged us to impose the suspension retroactively to September 30, 2013, the date respondent first became administratively ineligible to practice law in New Jersey. Counsel noted that, although respondent is current in her payments to the New Jersey Lawyers' Fund for Client Protection, she must fulfill her continuing legal education requirements to become administratively eligible to practice law in New Jersey.

Counsel maintained that the passage of time from respondent's misconduct to the prosecution of this matter, her serious health issues, and the other mitigating factors presented warranted the imposition of a retroactive suspension.

Pursuant to R. 1:20-14(a)(5), "a final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state."

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides:

> The Board shall recommend imposition of the identical action or discipline unless the Respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the Respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (D) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the unethical conduct established warrants substantially different discipline.

Bound by the New York determination, we find that respondent is guilty of the above-cited RPCs. The only issue left for determination is whether the circumstances of this case warrant substantially different discipline under subsection (E).

The following cases in which attorneys failed to supervise nonlawyer employees, in conjunction with other ethics violations, suggest that respondent's overall conduct warrants a one-year suspension.

In In re Stransky, supra, 130 N.J. 38, the attorney's wife/secretary/bookkeeper misappropriated $32,341 from her husband's trust account for her own use over a period of years. She was able to keep the information from him because he trusted her completely and failed to properly supervise his attorney accounts. Id. at 41.

In August 1989, when the OAE learned that Stransky's trust account was overdrawn, it scheduled a demand audit at which Stransky failed to appear. He also did not appear at a rescheduled audit. Stransky's wife, who handled the mail and telephone calls, had diverted the disciplinary authorities' efforts to communicate with him. Stransky learned of his wife's misappropriations and of his temporary suspension only after two OAE investigators appeared at his office. Ibid.

Unbeknownst to Stransky, in addition to misappropriating client trust funds, his wife also depleted his personal savings and caused eighty checks on that account to bounce, resulting in $1,600 in bank charges. Id. at 42.

The Court found that Stransky improperly delegated signatory power over the trust account; failed to exercise supervision and control over his attorney accounts; violated the recordkeeping rules, including his failure to reconcile his trust accounts; failed to supervise a nonlawyer employee; and, "the most serious aspect," negligently misappropriated client funds, stemming from his other improprieties. Ibid.

Stransky's conduct was found to be significantly more serious than other negligent misappropriation cases because

> [h]e was completely irresponsible in the management of his attorney accounts and totally abdicated his fiduciary responsibilities to his clients for at least an entire year. . . . As an attorney, such conduct cannot be tolerated. The attorney's fiduciary responsibility for client trust funds is a non-delegable duty. In turning over his attorney trust account to his wife without any attempt to supervise the disposition of client trust funds, respondent violated that duty. Moreover, his actions set up the scenario through which his wife was able to steal client funds. It is merely fortuitous that he was subsequently able to make his clients whole and avoid even greater consequences.
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> [Id. at 44.]

A one-year suspension was also imposed in In re Ejiogu, 197 N.J. 425 (2009). There, the attorney, who had a busy immigration practice, abdicated his responsibilities and failed to supervise an individual whom he believed to be a real estate broker, Gilbert Hart. He trusted Hart implicitly and permitted him to take control of several real estate transactions, through Hart's companies, which functioned as Ejiogu's "paralegal outfit". In the Matter of Nedum C. Ejiogu, DRB 08-163 (November 18, 2008) (slip op. at 3).

Ejiogu deposited the real estate proceeds into his trust account, then authorized disbursements to Hart's companies, who failed to satisfy various liens. Instead of paying off amounts listed on the HUD-1s, Hart negotiated various checks, keeping the proceeds for his own use. Id. at 5. The OAE's investigation did not reveal, however, that Ejiogu had improperly taken funds from his trust account for his own benefit. Rather, he received only his standard attorney's fees in connection with the transactions. Id. at 13.

While Ejiogu viewed Hart as a paralegal, Hart unlike a paralegal, was not present in his office, making it impossible for respondent to exercise the required supervision. Ejiogu permitted Hart to perform the functions that were his

responsibility and allowed him to control his files and funds. Id. at 37.

We found no proof that Ejiogu knew that Hart had not intended to pay off liens and that he was stealing client funds. Id. at 36. Thus, we found only that Ejiogu's actions were negligent, even reckless, but not knowing. Id. at 36. Ejiogu was guilty of failure to safeguard funds, making misrepresentations on HUD-1 settlement statements, and reckless failure to ensure that the settlement funds were properly disbursed. Id. at 40.

In In re Hecker, 167 N.J. 5 (2001), the attorney received a three-month suspension for negligent misappropriation of client funds, failure to safeguard funds, failure to supervise a non-lawyer assistant, gross neglect, lack of diligence, and recordkeeping violations.

In 1994, Hecker's clerical employee, Gregory Purish, had stolen $15,000 from the trust account by issuing a trust account check to himself, forging Hecker's name on it, and cashing it. In the Matter of Laurence A. Hecker, DRB 99-379 (August 15, 2000) (slip op. at 2). Shortly thereafter, Purish was arrested for bank robbery. After Purish's early release from prison, Hecker re-hired him to do clerical work in his office, on the condition that Purish not handle any financial records or accounts. Hecker also instructed his secretary to keep his

attorney trust and business account checkbooks in a locked desk drawer. Hecker, however, forgot that an estate checkbook was in the client file, where Purish found it. Over the course of three weeks, Purish issued to himself and his friends ten checks from that estate's checking account, totaling $6,850. We found that Hecker failed to safeguard the estate funds by hiring an individual whom he knew had a history of drug and alcohol addiction and a criminal record. Id. at 11.

But see 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; we distinguished the case from Stransky, noting that the attorneys did not authorize their employee to sign trust account checks, rather, she either forged their names or obtained their signatures under false pretenses); In re Moras, 151 N.J. 500 (1997) (reprimand for attorney who failed to adequately supervise his secretary, who then stole $650 in client funds; the attorney failed to maintain required records and failed to safeguard client funds; the attorney

made restitution; we considered numerous mitigating circumstances including his prompt disclosure of the facts to the OAE once he discovered the improprieties, his full cooperation with the OAE and prosecutor's office in the prosecution and ultimate conviction of his bookkeeper, his prompt restitution to his clients, and his continuing personal and financial injury as a result of his bookkeeper's criminal acts); In re Klamo, 143 N.J. 386 (1996) (reprimand for attorney who failed to maintain required records, commingled personal and client funds, failed to adequately supervise a paralegal who embezzled at least $14,345, exhibited gross neglect, and failed to cooperate with the OAE; numerous mitigating factors were considered); and In re Hofing, 139 N.J. 444 (1995) (reprimand where a random audit of the attorney's trust and business account records revealed that the attorney had turned over all bookkeeping, recordkeeping, and bank duties to his office assistant and bookkeeper and did not review any trust account records or reconciliations; he signed trust account checks in blank to permit the bookkeeper to conduct trust transactions; over a four-year period, the bookkeeper embezzled almost half a million dollars from the attorney's trust account and personal account; mitigating factors considered).

Here, respondent abdicated her responsibilities and improperly gave her paralegal signatory authority over an escrow account

earmarked for real estate transactions. She also took a cavalier attitude toward Sery's requests for the release of the escrow funds. She ignored those requests and even ignored the complaint that he filed, claiming a belief that he had sued the wrong entity or that it was of no concern because her name was misspelled. Respondent was not spurred into action until Sery finally filed a grievance against her. Only then did she discover that, although her office had been holding the funds, Vayman had stolen them. To compound her wrongdoing, respondent made misrepresentations to Sery and his attorney and then to the ethics authorities that she had explained to Sery and his attorney the reason for the delay in releasing those funds. Once respondent realized that she was responsible for the return of the escrow funds, she tried to condition the payment on receiving proof that Sery had withdrawn his grievance. Finally, respondent was guilty of recordkeeping violations.

This is not a situation where the attorney was duped by a staff member. Respondent gave Vayman the authority to write checks, which Vayman then used to steal the funds. Although the record recites a heart-wrenching description of respondent's medical tribulations, her ethics problems arose before her medical problems were discovered. We are sympathetic to respondent's condition, but we do not find that her health issues serve to reduce the required

quantum of discipline. Like the attorneys in Stransky and Ejiogu, respondent, too, should receive a one-year suspension.

We, therefore, grant the OAE's motion for reciprocal discipline and impose a one-year suspension, retroactive to May 17, 2013, the effective date of respondent's New York suspension. Although Members Gallipoli and Zmirich also voted to impose a one-year retroactive suspension, they determined that the suspension should be retroactive to September 30, 2013, the date on which respondent became administratively ineligible to practice law in New Jersey.

Members Hoberman and Rivera did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Yana Shtindler
Docket No. DRB 16-029

Argued: June 16, 2016

Decided: September 29, 2016

Disposition: One-year retroactive suspension

Members	One-year Retroactive Suspension	Recused	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli	X		
Hoberman			X
Rivera			X
Singer	X		
Zmirich	X		
Total:	7		2

Ellen A. Brodsky
Chief Counsel