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SUPREME COURT OF NEW JERSEY

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March 22, 2017

Mark Neary, Clerk
Supreme Court of New Jersey
Post Office Box 970
Trenton, New Jersey 08625

Re: In the Matter of Heli Marjo Myyrylainen

Docket No. DRB 16-438

District Docket No. XIV-2015-0031E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board may deem appropriate), filed by the Office to Attorney Ethics (OAE) pursuant to R. 1:20-10. Following a review of the record, the Board determined to grant the motion. In the Board's view, a reprimand is the appropriate measure of discipline for respondent's misconduct.

Specifically, respondent represented grievant Mervat Rezk, and acted as settlement agent, in the refinance of two Jersey City properties, one on John F. Kennedy Boulevard and the other on West Side Avenue. The Kennedy Boulevard property was refinanced on June 5, 2009 and the West Side Avenue property on July 9, 2009. Boiling Springs Bank wired into respondent's trust account the funds required for each transaction. In both matters, respondent disbursed the funds properly, with two exceptions.

In respect of the Kennedy Boulevard property, the HUD-1 reflected two liens in favor of Jersey City, one for \$6,242.44 in

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water and sewer charges and the other for \$6,940.20 in property taxes. The liens were subject to a single redemption certificate, totaling \$13,182.64. Although respondent withheld \$13,182.64 from the closing proceeds to satisfy the full amount of the redemption certificate, on Rezk's instruction, she did not remit the total amount due because Rezk was attempting to negotiate a reduction of penalties and interest on the tax lien, upon the belief that the lender had failed to pay the taxes it had collected from Rezk as part of her monthly mortgage payment.

Thus, without Boiling Springs Bank's knowledge or authority, on June 5, 2009, respondent sent to the Jersey City Tax Collector a \$6,242.44 Bank of America cashier's check, representing partial payment of the redemption certificate, that is, the water and sewer charges. The Board found that, in so doing, respondent violated RPC 1.15(b), which requires an attorney, upon receiving funds in which a third party has an interest, to promptly deliver those funds to that party - in this case, the tax collector. Indeed, respondent acknowledged that, despite Rezk's instruction to withhold payment of the property tax portion of the lien, respondent had an obligation to both Boiling Springs Bank, the lender, and Jersey City to pay the escrowed property taxes in a timely fashion.

The tax collector refused to accept partial payment of the total lien and returned the cashier's check to respondent, who neither stopped payment on the check nor replaced the check with one for the full amount due. Due to respondent's inaction, Bank of America eventually forwarded the proceeds of the uncashed cashier's check to the New Jersey Department of the Treasury's Unclaimed Property Administration (NJUPA). By failing to regain control of the funds and, thus, protect them, respondent violated RPC 1.15(a), which requires an attorney to safeguard funds belonging to clients and third persons.

On February 9, 2010, more than eight months after the refinance, respondent wrote to Rezk about the unpaid redemption certificate and stated that, although she continued to hold the funds in escrow, that amount was now insufficient to satisfy a new certificate. Respondent asked Rezk to provide her with an updated redemption certificate, along with the difference between the \$13,182.64 that respondent was holding and the amount now due.

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Respondent's February 9, 2010 statement to Rezk (that she was holding \$13,182.64 in her trust account) was inaccurate because the funds from the cashier's check had been deposited with the NJUPA by that point. Indeed, as of February 9, 2010, respondent's trust account held only \$6,980.20¹ for Rezk, rather than the full \$13,182.64 escrowed at the June 5, 2009 closing. Respondent believed that the \$6,242.44, which she had previously sent to the Jersey City Tax Collector, remained in her trust account because she was not properly reconciling the account.

Respondent copied Boiling Springs Bank on the February 9, 2010 letter to Rezk. Prior to that date, she had not notified the bank that she was about to cede, or had ceded, control of the escrow monies to Rezk, rather than paying the obligations directly. Thus, the February 9, 2010 letter was the bank's first notice, more than eight months later, that respondent had withheld payment of the property taxes portion of the Jersey City lien.

Rezk did not reply to respondent's February 9, 2010 letter. Respondent interpreted Rezk's silence to mean that their attorney-client relationship had come to an end. Respondent, thus, assumed that no further action was required on her part, and, eventually, forgot about the matter.

On February 26, 2013, nearly four years after the June 2009 closing, respondent sent a \$6,250.20 trust account check to Rezk, representing the \$6,940.02 in escrow funds less \$540, respondent's legal fee for another matter that she was handling for Rezk. She did this without Boiling Springs Bank's knowledge or authority. The parties stipulated, and the Board found, that, by releasing the funds directly to Rezk, respondent failed to safeguard the property tax escrow for Jersey City from the proceeds of the June 5, 2009 refinance of the Kennedy Boulevard property, a violation of RPC 1.15(a).

When, on an unidentified date, Rezk cashed the \$6,250.20 trust account check, issued in February 2013, only \$91.19 of the

¹The amount was likely \$6,940.20, which is what respondent actually withheld from the tax collector for the payment of the property tax portion of the lien. Although the stipulation contains other figures that, based on the Board's review of the record, appear to be inaccurate, the amounts identified in this letter are those cited in the stipulation.

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funds in respondent's trust account were for Rezk's benefit. Consequently, the payment of the check resulted in the invasion of \$6,151.25 in funds belonging to other clients. The Board presumed that the OAE was satisfied, based on its investigation, that the invasion was the result of respondent's deficient recordkeeping practices. Thus, by negligently invading other client funds, respondent violated RPC 1.15(a).

On February 27, 2013, respondent submitted a claim form to the NJUPA for the release of the \$6,242.44. On March 12, 2013, Rezk redeemed the tax certificate by paying \$35,415.18 to Jersey City. Based on the language used in the stipulation, the Board presumed that Rezk used the \$6,250 to defray part of that expense.

Of the \$35,415.18 that Rezk was required to pay to Jersey City to redeem the tax certificate for the Kennedy Boulevard property, \$9,118.53 represented additional interest that had accrued due to respondent's failure to pay the escrowed monies in a timely fashion.² Although a good part of the delay was due to respondent's mistaken assumption that Rezk's silence signified that she had terminated their professional relationship, by her delay, respondent violated RPC 1.3. Respondent had an obligation to clarify the status of the parties' relationship, and her failure to do so was the result of a lack of diligence on her part.

On July 3, 2013, the NJUPA paid the \$6,242.44 claim, with interest, for a total of \$6,248.16. Respondent deposited the check into her trust account and, on July 11, 2013, issued a trust account check to Rezk, in the same amount, without Boiling Springs Bank's knowledge or authority, another violation of RPC 1.15(a).

In respect of the West Side Avenue property, the parties stipulated that, when the property was refinanced, in July 2009, respondent "unintentionally" failed to disburse \$2,533.61 to Jersey City, in payment of the third quarter 2009 property taxes. The Board found that respondent's failure violated RPC 1.3 and RPC 1.15(b).

In March 2012, nearly three years later, Rezk informed respondent that the third quarter property taxes had not been paid and that, consequently, \$781.59 in additional interest had

² On November 29, 2016, respondent reimbursed Rezk for that amount.

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accrued. On March 23, 2012, respondent issued a \$3,132.47 trust account check to Rezk, representing the amount due, plus the accrued interest. She did so without Boiling Springs Bank's knowledge or authority. The parties stipulated, and the Board found that, by releasing the funds directly to Rezk, respondent failed to safeguard the property tax escrow for the West Side Avenue property. Further, when the trust account check was cashed, it caused a -\$638.81 client balance for Rezk, "thereby impacting other client funds," a violation of RPC 1.15(a). Respondent did not replenish the negative balance until January 8, 2014.

The OAE's investigation uncovered the following recordkeeping deficiencies in respondent's attorney records:

- a. No trust receipts journal [R. 1:21-6(c)(1)(A)];
- b. No trust disbursements journal [R. 1:21-6(c)(1)(A)];
- c. No ledger card identifying attorney funds for bank charges [R. 1:21-6(d)];
- d. No monthly trust account bank reconciliation with client ledgers, journals, and checkbook [R. 1:21-6(c)(1)(H)]; and
- e. Deposit slips lacked sufficient detail [R. 1:21-6(c)(1)(H)].

The above violations of R. 1:21-6, in turn, violated RPC 1.16(d), which requires all attorneys to comply with the recordkeeping rule.

In mitigation, the Board accepted the parties' reliance on the following: respondent's lack of disciplinary history; her replenishment of the trust account shortage as soon as she became aware of it; her reimbursement of Rezk for the additional interest that had accrued; and her employment of an accountant to reconstruct her client ledgers and perform three-way reconciliations of the trust account, which the accountant continues to do on a monthly basis. In aggravation, the stipulation cites respondent's delay in supplying the OAE with monthly three-way reconciliations of her trust account.

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The Board did not find that respondent violated either RPC 1.1(a) (gross neglect) or RPC 1.4(b) (failure to communicate with the client).

The Board determined that a reprimand is the appropriate quantum of discipline for respondent's violation of RPC 1.15(a), (b), and (d). See, e.g., In re Cameron, 221 N.J. 238 (2015) (after the attorney had deposited into his trust account \$8,000 for the payoff of a second mortgage on a property that his two clients intended to purchase, he disbursed \$3,500, representing legal fees that the clients owed to 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 deal fell through, the attorney, who had forgotten about the \$3,500 disbursement, issued an \$8,000 refund to one of the clients, thereby invading the 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 (d)); and In re Regojo, 185 N.J. 395 (2005) (attorney negligently misappropriated \$13,000 in client funds as a result of his failure to properly reconcile his trust account records; the attorney also committed several recordkeeping improprieties, commingled personal and trust funds in his trust account, and failed to timely disburse funds to clients or third parties; although the attorney had two prior reprimands, one of which stemmed from negligent misappropriation and recordkeeping deficiencies, the Board took mitigating factors into consideration).

In the Board's view, respondent's violation of RPC 1.3 does not require enhancement of the reprimand because lack of diligence typically results in the imposition of an admonition. See, e.g., In the Matter of Jonathan Lautman, DRB 11-107 (July 26, 2011) (after the attorney had settled his client's personal injury case and she had signed a release, she became dissatisfied with the result, refused to sign the accounting statement, and instructed him not to issue the release; instead of promptly filing a motion seeking enforcement of the settlement, the deposit of funds with the court, and the distribution of the funds, the attorney waited three years to do so).

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Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated December 27, 2016.
2. Stipulation of discipline by consent, dated December 27, 2016.
3. Affidavit of consent, dated December 20, 2016.
4. Ethics history, dated March 22, 2016.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/sl

c: w/o enclosures

Bonnie C. Frost, Chair (via e-mail)
Disciplinary Review Board
Charles Centinaro, Director (via e-mail)
Office of Attorney Ethics
Steven J. Zweig, Deputy Ethics Counsel (via e-mail)
Office of Attorney Ethics
Heli Marjo Myyrylainen, Respondent (via e-mail)
Mervat Rezk, Grievant