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April 26, 2017

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

Re: In the Matter of Pasquale Marago
Docket No. DRB 17-045
District Docket No. XIV-2015-0325E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board deems appropriate), filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-10(b)(1). 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 1.7 (concurrent conflict of interest), RPC 1.8(a) (improper business transaction with a client), RPC 1.15(a) (negligent misappropriation of client funds and failure to safeguard funds), and RPC 1.15(d) and R. 1:21-6(c)(1)(H) (recordkeeping violations).

Specifically, in May 2015, respondent was retained to represent Pranav Amin in the purchase of property. Amin gave respondent a \$28,000 check for the deposit, which respondent mistakenly deposited into his business account, instead of his trust account. Between May 22, 2015 and July 7, 2015, respondent made additional deposits into his business account, and made electronic payments and disbursed checks from that account,

leaving an \$11,703.84 balance in his business account. Respondent, thus, misappropriated \$16,296.16 from Amin's down payment.

As the settlement agent for the Amin transaction, respondent disbursed various checks from his trust account. However, because respondent had improperly deposited Amin's deposit into his business account, the disbursements created an overdraft in his trust account. In addition, respondent over-disbursed funds totaling \$73.65 on behalf of two other clients, and issued two trust account checks to himself, totaling \$2,228.84, without attributing them to any client matters. Respondent's failure to perform three-way reconciliations and to comply with various other recordkeeping rules prevented him from discovering his mistake until July 2015.

Respondent also engaged in a conflict of interest when he represented three commercial tenants (Essam Abozid, Xuefeng You, and Albert Cho) in a lawsuit against their landlord, 437 Properties LLC, in connection with damages to their individual businesses, located at 104 Second Avenue, Raritan, New Jersey (the Second Avenue Property). All three plaintiffs signed a retainer agreement providing that each was to pay a \$1,000 retainer, as well as a contingent fee of twenty percent of the gross settlement, if any.

On March 13, 2015, Cho transferred his interest in the lawsuit to Abozid for \$40,000. Thereafter, the parties agreed to settle the lawsuit by transferring the property to Abozid and You in lieu of monetary damages. As security for respondent's fee, the property was transferred to a limited liability company (LLC), of which respondent was named a member. He also was named registered agent of the company.

Respondent opened a bank account for the company, for which he was the only authorized signatory. At no time prior to the formation of the LLC or the opening of the bank account did respondent comply with the provisions of RPC 1.8(a). He neither informed the clients of the desirability of seeking the advice of independent legal counsel nor obtained their informed, written consent to the essential terms of the transaction or his role in it.

Thereafter, the members of the LLC entered into a contract for sale of the Second Avenue Property. In the interim, respondent learned about the overdraft in his account and asked Abozoid and

You for permission to receive his twenty percent fee immediately upon closing, to which they apparently agreed. Respondent represented the sellers in the July 2015 sale of the property for \$525,000. On August 5, 2015, respondent took his fee from the sale, and used a portion of his fee to cover the shortage he had created in his trust account by mis-depositing Amin's deposit into his business account.

Abozid and You disputed the amounts to which they were entitled from the sale of the Second Avenue Property. Thus, respondent did not disburse any funds to them, refused to represent them in that dispute, and, on July 6, 2016, approximately one year after the closing, disbursed the remaining amounts from the sale to Abozid's new attorney, to escrow the funds until Abozid's and You's dispute was resolved.

Respondent has no history of discipline. The stipulation listed no aggravating factors.

In matters involving a conflict of interest, absent egregious circumstances or serious economic injury, ordinarily a reprimand will result. In re Guidone, 139 N.J. 272, 277 (1994) and In re Berkowitz, 136 N.J. 134, 148 (1994). Similarly, recordkeeping improprieties and negligent misappropriation of client funds generally lead to a reprimand. See, e.g., In re Cameron, 221 N.J. 238 (2015) (recordkeeping violations and negligent misappropriation of trust account funds occurred when the attorney returned a client's deposit from a failed real estate transaction, having forgotten that he had already taken a portion of those funds as legal fees that the client owed; the client did not dispute the attorney's entitlement to the funds; prior admonition and mitigating factors considered); In re Wecht, 217 N.J. 619 (2014) (attorney's inadequate records caused him to negligently misappropriate trust funds by improperly disbursing funds twice to the same client); and In re Gleason, 206 N.J. 139 (2011) (in five real estate transactions involving one client, attorney disbursed more funds than he had collected for the client; excess disbursements resulted from the attorney's poor recordkeeping practices; over-disbursements were for the client's benefit; the attorney also failed to communicate in writing the basis or rate of his fee).

In light of the absence of aggravating factors, including the fact that respondent has no ethics history, the Board determined that a reprimand is warranted for his misconduct.

April 26, 2017

Page 4 of 4

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated January 31, 2017.
2. Stipulation of discipline by consent, dated January 31, 2017.
3. Affidavit of Consent, dated January 24, 2017.
4. Ethics history, dated April 26, 2017.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/sl
Enclosures

c: (w/o enclosures)
Bonnie C. Frost, Chair
Disciplinary Review Board
Charles Centinaro, Director
Office of Attorney Ethics
Steven J. Zweig, Deputy Ethics Counsel
Office of Attorney Ethics
Pasquale Marago, Respondent