DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 962
TRENTON, NEW JERSEY 08625-0962
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October 25, 2017

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

RE: In the Matter of Mauro C. Casci
Docket No. DRB 17-309
District Docket No. IX-2015-0006E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (censure or such lesser discipline as the Board deems warranted) filed by the District IX Ethics Committee, 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 measure of discipline for respondent's violations of RPC 1.15(c) (failure to keep separate funds over which the lawyer and another claim an interest, until there is an accounting and severance of their interests), RPC 3.4(c) (knowingly violating an obligation under the rules of a tribunal), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

Specifically, this matter involved a complex commercial litigation that spanned several years. In September 2008, David

Bensoussan retained respondent to file a lawsuit against contractors who had damaged a property owned by Bensoussan's company and to pursue the insurance carrier to pay covered losses. Respondent filed the lawsuit in October 2008. Bensoussan's lender, Liberty Pointe Bank (Liberty), filed a lawsuit against him. Bensoussan retained another law firm to represent him in that lawsuit.

In November 2009, Liberty moved to intervene in Bensoussan's lawsuit. Thereafter, on March 5, 2010, in order to secure Liberty's share of any settlement proceeds, the judge signed an order requiring that any settlement funds be held in trust, pending further order of the court. Respondent's November 7, 2010 e-mail represented that he would not disburse funds from his trust account until the parties agreed on the distribution of the funds.

Apparently, respondent's copy of the court's March 5, 2010 order was misfiled in another case file and not retrieved until 2012. On June 30, 2011, a final settlement was reached for an aggregate of $625,000. At that time, Bensoussan instructed respondent to consult his financial advisor, who informed respondent that, going forward, Bensoussan's other law firm would handle the negotiations with the lender. Respondent's services, therefore, were terminated.

Respondent mistakenly believed that, thereafter, the other law firm would communicate with the lender, and would notify it both that respondent would be disbursing $518,300 of the trust funds to the other law firm and that he would take a reduced fee and costs, totaling $106,700. Respondent did not obtain a court order permitting the transfer of funds to the other law firm, or the payment to himself.

In April 2012, Liberty obtained a judgment in foreclosure against Bensoussan and his companies. Liberty then filed a lawsuit for the balance of the settlement funds to satisfy its judgment against Bensoussan and his companies and for claims against respondent and the other law firm. The lawsuit settled, allowing respondent to keep the fees he previously had retained.

No aggravating factors were identified in the stipulation. Mitigating factors included respondent's good reputation and character; his lack of a disciplinary history in his forty years at the bar; his ready admission of wrongdoing and expression of contrition and remorse; the aberrational nature of the misconduct; the lack of actual injury to the client; respondent's erroneous

reliance on the other law firm's authority to negotiate with Liberty; and respondent's significant medical issues.

We dismissed the RPC 1.15(b) charge (failure to promptly notify a client or third person of receipt of funds or to deliver those funds) for lack of sufficient facts to support this violation. The Board could not determine, by clear and convincing evidence, that respondent violated this RPC, in light of his mistaken belief that the other law firm was assuming responsibility for the negotiations with Liberty.

Ordinarily, the improper release of escrow funds results in either an admonition or a reprimand. See, e.g., In the Matter of Annette P. Alfano, DRB 15-079 (May 27, 2015) (admonition where, after the cancellation of a real estate transaction, the attorney improperly released third-party escrow funds, based solely on the instructions of the former client, and without the express authorization of the parties; the Board considered that the attorney did not act for personal gain, she trusted her client, and she had an unblemished disciplinary record); In the Matter of Michael D. Landis, DRB 09-395 (March 19, 2010) (admonition for attorney who disbursed an $86,500 real estate deposit to his client, the buyer, in the face of a dispute and despite a contractual clause providing for the deposit of the funds with the court in the event of a disagreement between the parties; mitigating factors were the attorney's belief that he had properly voided the contract of sale, the lack of a disciplinary history, and his inexperience in real estate matters); In re Bassetti, 213 N.J. 41 (2013) (reprimand for attorney who was required to hold a $91,500 real estate deposit in escrow, pending a settlement, but disbursed the deposit to his client to enable him to satisfy obligations; the attorney knew he could release the funds only with the authorization of both parties, or at the closing, which never took place, but released them because he thought the sale was a "done deal" and because of his desire to help his client, who was like family; no history of discipline); and In re Holland, 164 N.J. 246 (2000) (reprimand where a dispute arose over fees between attorneys who had served as co-counsel for a client; a judge ordered Holland to disburse forty percent of the attorneys' fees to the other attorney and to hold the remainder in trust, pending either an agreement between counsel on the distribution of the fees, or further order of the court; the attorney, nevertheless, disbursed the majority of the remaining fees, without seeking to modify the order; violations of RPC 1.15(c), RPC 3.4(c), RPC 8.4(d), and RPC 1.15(d)).

Based on the above precedent and mitigating factors, the Board determined that a reprimand is the appropriate quantum of discipline for respondent's misconduct.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated July 19, 2017

2. Affidavit of consent, dated July 18, 2017

3. Stipulation of discipline by consent, dated August 16, 2017

4. Ethics history, dated October 25, 2017.

Very truly yours,

Ellen A. Brodsky
Chief Counsel

c: (without enclosures)
Bonnie C. Frost, Chair
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