SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 17-213
District Docket No. XIV-2015-0443E

IN THE MATTER OF	
RAVINDER S. BHALLA	
AN ATTORNEY AT LAW	

Decision

Argued: September 14, 2017

Decided: December 14, 2017

Steven J. Zweig appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a disciplinary stipulation between the Office of Attorney Ethics (OAE) and respondent. The OAE sought a reprimand, or such lesser discipline as we deemed warranted, for respondent's negligent misappropriation of, and failure to safeguard, an employee's individual retirement account (IRA) contributions and respondent's matching contributions, in addition to the employee's Social Security withholdings, a

violation of RPC 1.15(a) (failure to safeguard funds); his failure to promptly remit those monies to the investment institution managing the IRA and to the Internal Revenue Service (IRS), a violation of RPC 1.15(b) (failure to promptly deliver to a third person funds that that person is entitled to receive); and both his misrepresentation on the employee's W-2 form that the Social Security taxes had been paid and his failure to follow through on his promise to verify and pay the amount due and owing to the employee's IRA account, a violation of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). We determined to impose a censure on respondent for his violation of RPC 1.15(a) and (b) and RPC 8.4(c).

Respondent was admitted to the New Jersey bar in 1999 and to the New York bar the following year. At the relevant times, he maintained an office for the practice of law in Hoboken.

In 2010, respondent received an admonition for recordkeeping violations and making disbursements against uncollected funds. In the Matter of Ravinder Singh Bhalla, DRB 10-258 (December 6, 2010).

The facts are taken from the parties' disciplinary stipulation, dated June 12, 2017.

During the year 2008 and continuing through July 3, 2009, respondent employed grievant Alexander Bentsen, Esq., as an

associate in his law firm, at an annual salary of $60,000, plus a $1,500 bonus. Bentsen directed respondent to withhold from his paycheck ten percent of his gross income, which was to be deposited in his IRA account at UBS Financial Services, Inc. (UBS). Under the terms of the retirement plan that respondent offered to his employees, respondent agreed to match Bentsen's contributions by up to three percent of his annual gross income.

Consequently, for the year 2008, respondent should have withheld $6,000 from Bentsen's gross income, deposited that amount in his UBS account, and contributed $1,800 to Bentsen's IRA. Yet, Bentsen's UBS statement for December 2008 reflected a total of only $5,792.29 in contributions for the year. Of this amount, $2,042.29 was attributed to Bentsen, and $3,750 was attributed to respondent. Thus, Bentsen's retirement account was underfunded by $2,007.71.

For the year 2009, a total of $4,199.99 should have been contributed to Bentsen's UBS account, representing $3,230.78 from Bentsen and $969.21 from respondent. According to Bentsen's July 2009 UBS statement, however, no contributions had been made at all.

In total, respondent failed to remit to UBS $6,207.70 in IRA contributions for the years 2008 and 2009.

The stipulation suggests that respondent's failure to make these contributions was the result of his decision to outsource the management of his firm's payroll. Specifically, on an unidentified date in late 2008, respondent retained ADP to manage the firm's payroll and retirement fund payments. Prior to respondent's retention of ADP, he had issued to UBS, on a bi-weekly basis, checks "for his firm's IRA contributions, but the checks did not delineate for whom the contributions were designated." According to the stipulation, "due to the age of the matter," UBS was unable to provide "any records" reflecting how those monies had been allocated.

Although ADP retains and transmits federal and state tax payments to the appropriate taxing authorities, it does not retain and transmit any funds designated for investments. Rather, the employer transmits those funds directly to the investing institution and reports the amount to ADP, which incorporates the information on the individual employee's pay stub.

Respondent was of a different understanding, however. For the year 2009, he believed that, in addition to processing his firm's payroll, ADP transferred to UBS, on a bi-weekly basis, retirement contributions "on his employees' behalf." The stipulation does not specify whether the contributions were those of the employees or the firm or both.

The parties stipulated that, despite the $6,207.70 shortage in IRA contributions for the years 2008 and 2009, "it cannot be conclusively determined that respondent deliberately withheld funds from [Bentsen]'s retirement account." First, many relevant documents no longer exist. Second, "confusion [was] generated by respondent's transition in late 2008 to ADP to handle payroll processing for his firm employees."

Although not specified in the stipulation, it appears that respondent terminated Bentsen's employment, effective July 3, 2009. By that time, Bentsen had made respondent aware of the UBS problem, which Bentsen had discovered while preparing his 2008 income tax returns.

On July 9, 2009, respondent sent an e-mail to Bentsen, stating that he would review his records and provide Bentsen with the exact amount remitted to UBS in 2008 for his IRA account. Respondent also acknowledged that the firm likely owed Bentsen $3,900 in employee and employer IRA contributions for the year 2009 and promised to review his records in that regard as well.

Despite his promises, respondent did not review his records, follow up with Bentsen, or ensure that the funds were credited to Bentsen's IRA. Although Bentsen made numerous requests of respondent to rectify the matter, as shown below, he did not

return "the funds" to Bentsen until 2016 and 2017, only after Bentsen had filed a grievance against him, in August 2015.

In addition to the non-payment of Bentsen's retirement contributions, which were withheld from his paycheck, respondent failed to remit Bentsen's 2008 Social Security withholding payments. He also owed Bentsen a small sum of money for some fees incurred by Bentsen.

Respondent corrected the underpayment of the Social Security withholding payments "sometime during 2013 or 2014," even though he had received notification of the underpayment from the IRS in 2008. On June 15, 2016, he sent to Bentsen two checks, one for $4,199.99, representing Bentsen's and the firm's 2009 IRA contributions, and the other for $86, representing the fees incurred by Bentsen. On May 10, 2017, respondent sent to Bentsen a $2,007.70 check, representing the 2008 IRA contributions.

Based on the above facts, the parties stipulated to respondent's failure to safeguard Bentsen's $2,007.71 in 2008 IRA contributions. Respondent also failed to safeguard and negligently misappropriated Bentsen's $4,199.99 in 2009 IRA contributions, in addition to $4,000 in Social Security withholding. Consequently, respondent failed to promptly deliver to a client or third person (that is, UBS and the IRS) funds that they were entitled to receive, a violation of RPC 1.15(b).

The stipulation cites two examples of conduct involving dishonesty, fraud, deceit or misrepresentation, a violation of RPC 8.4(c). First, respondent misrepresented the payment of Social Security taxes on Bentsen's W-2 forms. Second, respondent "fail[ed] to correct the false impression that he would verify and correct the deficiencies in [Bentsen]'s retirement account for 2008 and 2009." Specifically, when Bentsen raised the issue of the missing 2008 IRA funds, respondent claimed, in a March 17, 2009 e-mail, that he had been making bi-weekly matching contributions to UBS, even though he had undertaken no effort to research or resolve Bentsen's W-2 issue.

Similarly, on June 29, 2009, after Bentsen had informed respondent that his 2009 IRA had not been funded, respondent sent Bentsen an e-mail simply providing him with the name of the UBS account representative and stating that the representative "should be calling you," thus, leaving it up to Bentsen to correct the problem. A few days later, Bentsen informed respondent that he had confirmed with UBS that no funds had been deposited in his IRA account. Although respondent replied that he would verify the information by the next day, he failed to do so. Rather, respondent "failed to take any substantial steps to ameliorate Bentsen's financial issues" until after he was interviewed by the OAE, nearly seven years later.

In mitigation, the parties noted respondent's contrition and remorse. In aggravation, the stipulation cited his 2010 admonition.

Following a review of the record, we are satisfied that the stipulation clearly and convincingly establishes that respondent's conduct was unethical and in violation of RPC 1.15(a), RPC 1.15(b), and RPC 8.4(c).

In respect of Bentsen's portion of Social Security taxes due and owing to the IRS, respondent withheld $4,000 for the year 2008 but did not remit the monies to that federal agency until either 2013 or 2014. These funds represented monies earned by Bentsen, which respondent, as his employer, had agreed to withhold and turn over to the IRS, which was entitled to receive them. Respondent's failure to do so violated RPC 1.15(b), which requires a lawyer, who receives funds in which a third person has an interest (in this case, the IRS), to "promptly" deliver the funds to that third person. Respondent also violated RPC 8.4(c), by issuing W-2 forms to Bentsen that reflected the payment of the taxes withheld but not remitted. See, e.g., In re Pemberton, 181 N.J. 551 (2004) (for an eight-year period, the attorney failed to pay quarterly federal withholding taxes on behalf of his employees, yet issued W-2 forms reflecting the payment of those taxes; violation of RPC 1.15(b) and RPC 8.4(c)); and In re Frohling, 153 N.J. 27 (1998) (attorney

did not pay all or part of federal withholding taxes for five years and state unemployment compensation taxes for two years, yet issued W-2 forms reflecting that certain sums had been deducted from his employees' gross salaries and either had been or would be paid to the government; violations of RPC 1.15(b) and RPC 8.4(c)).

Respondent did not violate RPC 1.15(b) in respect of the payment of either his or Bentsen's IRA contributions to UBS. There is no evidence set forth in the stipulation that UBS was "entitled" to receive the contributions. Rather, UBS was simply the depository of those contributions, which comprised Bentsen's funds. Thus, to be precise, the person entitled to those monies was Bentsen, who relied on respondent to remit them to UBS on his behalf.

Respondent's nonpayment of the monies to UBS did violate RPC 1.15(a), however. That Rule requires an attorney to "appropriately safeguard" other parties' funds that are in the attorney's possession. Respondent did not safeguard Bentsen's IRA contributions, which were withheld from his paycheck.

The question of what happened to the monies is unanswered. According to the stipulation, the OAE could not "conclusively" determine that respondent knowingly misappropriated the monies. In addition, respondent was confused about ADP's role in the collection and remittance of IRA contributions, believing, albeit

incorrectly, that it was ADP that retained and remitted funds designated for investments. Moreover, "many of the relevant documents" that would shed light on the nature of the misappropriation "no longer exist." Thus, as the parties stipulated, the evidence establishes nothing more than that the misappropriation of Bentsen's funds was negligent, a violation of RPC 1.15(a). We cannot conclude otherwise.

The evidence also is insufficient to support the determination that respondent knowingly misappropriated the monies withheld from Bentsen for the payment of Social Security taxes. Actually, there is no explanation at all for respondent's failure to remit the funds to the IRS. Yet, under Pemberton and Frohling, the collection, non-remittance, and dissipation of Social Security taxes does not constitute knowing misappropriation, even if the attorney uses the funds for other purposes. Thus, respondent's failure to comply with his obligation can be deemed only negligent misappropriation.

Finally, by issuing W-2 forms to Bentsen, reflecting the payment of Social Security taxes, respondent violated RPC 8.4(c). See, e.g., Pemberton, supra, 181 N.J. 551, and Frohling, supra, 153 N.J. 27.

The stipulation contains insufficient evidence to support the conclusion that respondent violated RPC 8.4(c) in respect of the

IRA contributions. That charge is based on respondent's unverified claim that he had been making bi-weekly matching contributions to UBS, and his failure to follow through on his promise to verify information provided to him by Bentsen.

In respect of respondent's unverified claim to Bentsen, we note that a misrepresentation requires intent. Thus, respondent's mistaken belief about the payment of matching contributions was insufficient to establish a violation of RPC 8.4(c). See, e.g., In re Uffelman, 200 N.J. 260 (2009) (noting that a misrepresentation is always intentional "and does not occur simply because an attorney is mistaken or his statement is later proved false, due to changed circumstances," we dismissed the RPC 8.4(c) charge against the attorney because his unmet assurances to the client that he was working on various aspects of the case were the result of gross neglect rather than dishonest conduct; reprimand for gross neglect, lack of diligence, and failure to communicate with the client).

Further, respondent's failure to follow through on his promise to verify information provided to him by Bentsen was not a misrepresentation. See, e.g., In re Carlin, 208 N.J. 592 (2012) (an attorney's failure to follow through on a representation that he or she would take a certain action does not render the representation false, unless the representation was untrue at the

time it was made). The stipulation contains no suggestion that respondent had no intention of doing so.

To conclude, respondent violated RPC 1.15(a) as to the remittance of IRA contributions and payment of Social Security taxes, RPC 1.15(b) as to the payment of Social Security taxes, and RPC 8.4(c) as to the representations on Bentsen's W-2 forms regarding the payment of Social Security taxes.

The attorneys in Pemberton and Frohling received a reprimand for their violation of RPC 1.15(b) and RPC 8.4(c), arising out of their failure to remit Social Security taxes to the IRS and their issuance of false W-2 forms. Thus, a reprimand would be the appropriate measure of discipline for respondent's violation of those RPCs in this matter.

Respondent's additional infraction, that is, his failure to safeguard funds, warrants the imposition of an admonition. 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, a violation of RPC 1.15(a)). Thus, but for respondent's disciplinary history, his violation of RPC 1.15(a) and (b) and RPC 8.4(c) would warrant a reprimand.

Specifically, in 2010, respondent was admonished for recordkeeping violations and making disbursements against uncollected funds, based on a grievance filed against him in March of that year – less than a year after Bentsen had first brought the IRA and Social Security issues to respondent's attention. Yet, even though respondent was on notice that his conduct was under scrutiny in another matter, and even after he was disciplined in that matter, respondent was not moved to modify his handling of the non-payment of funds to Bentsen's IRA and the IRS. Thus, in our view, respondent's nonchalance regarding Bentsen's missing monies, over the course of six years, including while he was under investigation and then disciplined in another matter, justifies enhancement from a reprimand to a censure.

Chair Frost and Members Gallipoli and Singer voted to impose a three-month suspension. Members Clark and Hoberman 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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Ravinder Singh Bhalla
Docket No. DRB 17-213

Decided: December 14, 2017

Disposition: Censure

Members	Censure	Three-Month Suspension	Did not participate
Frost		X	
Baugh	X		
Boyer	X		
Clark			X
Gallipoli		X	
Hoberman			X
Rivera	X		
Singer		X	
Zmirich	X		
Total:	4	3	2

Ellen A. Brodsky
Chief Counsel