SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-250
District Docket No. XIV-2016-0272E

IN THE MATTER OF	:
JAMES R. LANGIONE	:
AN ATTORNEY AT LAW	:

Corrected Decision

Argued: October 19, 2017

Decided: January 11, 2018

Reid Adler 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 motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14(a)(4), based on respondent's six-month suspension in New York, effective July 24, 2015, for failure to monitor his attorney trust account and to properly supervise an employee who stole trust funds. We determine to impose a prospective, six-month suspension.

Respondent was admitted to the New Jersey bar in 1987 and the New York bar in 1982. He has no prior discipline; however, on August 28, 2014, the Court entered an Order declaring respondent ineligible to practice, based on his failure to pay his annual registration fee to the Lawyers' Fund for Client Protection (CPF). He remains ineligible to date.

Respondent did not notify the OAE of his six-month suspension in New York, R. 1:20-14(a)(1) requires.

On December 21, 2012, the Grievance Committee for the Ninth Judicial District of New York filed a Petition containing twelve ethics charges against respondent. On April 19, 2013, respondent filed an answer.

On June 13 and October 17, 2013, a hearing was held before a special referee, after which he filed a report, dated March 25, 2014, sustaining all of the charges against respondent. On June 25, 2015, the Supreme Court of New York, Appellate Division, Second Judicial Part, rendered its opinion and order, confirming charges one through five, and seven through twelve. Charge nine was partially sustained, while charge six was dismissed as duplicative.

Respondent and his law partner, Peter Galasso (Galasso), failed to supervise Anthony Galasso (Anthony), their bookkeeper/office manager and Galasso's brother. Anthony stole

in excess of $4.5 million of client funds held in two attorney escrow accounts. New York disciplinary authorities suspended Galasso for two years for violating his fiduciary obligations to the clients whose funds were stolen.

In respondent's matter, the Appellate Division quoted an excerpt from the Court of Appeals decision in Galasso's case, which summarized the underlying facts as follows:

> Anthony Galasso, in his capacity as office manager, deposited the funds into an escrow account at Signature Bank (the Baron escrow account). [Peter Galasso] and fellow partner James Langione were the only authorized [signatories] on the account application. However, Anthony Galasso apparently altered the application to permit electronic fund transfers and to include himself a -- [nonlawyer] -- as a [signatory].
>
> Between June 23, 2004, and January 1, 2007, Anthony Galasso transferred approximately $4,501,571 from the Baron escrow account into six other firm accounts maintained at Signature Bank through the use of roughly 90 Internet transfers. It seems that the Baron funds were used to replace money that Anthony Galasso had already removed from [other] firm accounts. Transferred funds from the Baron escrow account were then disbursed to [Peter Galasso], firm employees and other entities in the course of business, all without the knowledge of the firm's principals or the consent of the Barons. In particular, approximately $360,000 in funds transferred from the Baron escrow account were used to finance the purchase of the firm's office condominium. To escape detection, Anthony Galasso had the genuine Baron escrow account statements, generated by the bank, diverted to a post office box and fabricated false statements for review by the firm . . . .
>
> Anthony Galasso confessed to the theft of the above funds on January 18, 2007, and ultimately pleaded

> guilty to two counts of grand larceny in the first degree, 10 counts of falsifying business records in the first degree and 10 counts of criminal possession of a forged instrument in the second degree. He was sentenced to [two and a half] to [seven and a half] years' imprisonment, as well as $2,000,000 in restitution.
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> [OAEbEx.12,2-3, citing Matter of Galasso, 19 NY3d 688, 692-693 (N.Y. App. Div. 2012).] [1]

The Appellate Division concluded that, as with Galasso, respondent's culpability stemmed from his failure to oversee the management of the law firm's bank accounts, and his failure to supervise Anthony Galasso.

In respect of charge one of the verified petition, on June 11, 2004, $4,840,862.34 was deposited into the Baron Escrow Account. From that date through mid-January 2007, a series of electronic "web" transactions resulted in the transfer of $4.3 million of those funds into various accounts maintained by respondent and/or the law firm at Signature Bank. The Baron funds then were disbursed to respondent, other members and employees of the law firm, and various third persons and business entities. The Barons did not consent to or benefit from the disbursement of their funds and, as of the date of the Appellate Division opinion, they had not received the return of

[1] "OAEb" refers to the June 29, 2017 OAE brief in support of the motion for reciprocal discipline.

the $4.3 million. Respondent was found to have "failed to take reasonable steps to ensure that the funds maintained in the Baron Escrow Account were safeguarded," violations of New York former Code of Professional Responsibility DR 9-102 (a) and/or DR 1-102 (a) (7) (22 NYCRR 1200.46[a] and/or 1200.3[a][7]).[2]

Respondent also was found guilty of the above violations under charges two through four. Specifically, respondent was a signatory of the law firm's two Interest on Lawyer Accounts (IOLA), at Signature Bank and M&T Bank. Those two accounts were the law firm's attorney escrow accounts. According to charge two, in December 2005 or January 2006, a medical malpractice/wrongful death action for the Estate of George Carroll settled for $800,000 and, on June 7, 2006, those settlement funds were deposited into the M&T escrow account. Respondent thereafter failed to take reasonable steps to ensure that the escrow funds remained intact in the M&T account until

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[2] According to the OAE, 22 NYCRR 1200.46 equates to New Jersey RPC 1.15(a) (failure to safeguard funds); 22 NYCRR 1200.5(d)(2) equates to RPC 5.3(a) (failure to supervise nonlawyers); NYCRR 1200.46(e) equates to RPC 1.15(d) and R. 1:21-6(c)(1)(A) (only an attorney admitted to practice law in this state shall be an authorized signatory on an attorney trust account); NYCRR 1200.46(d)(1) equates to RPC 1.15(d) and R. 1:21-6(c)(1) (attorneys shall maintain enumerated attorney books and records for a period of seven years); and New Jersey does not have a Rule that is analogous to NYCRR 1200.3[a][7].

their proper disbursement, thereby facilitating their misappropriation.

In January 2007, the law firm notified estate representatives that the funds had been misappropriated. Although the firm was able to disburse $85,791.36 to the estate, the estate never received the return of the remainder of the funds. Similarly, out of a $175,000 settlement deposited into the M&T account for Adele Fabrizio, she received only $25,000, the remainder having been misappropriated.

In a matter for Theresa Halloran, settlement proceeds of $157,090.15 were deposited into the escrow account, from which she received only $35,000. The remaining funds were misappropriated. Apparently, these clients never received the remainder of their funds.

The Appellate Division quoted from the report of the special referee, concluding that respondent's "failure to provide appropriate oversight [of] his IOLA account(s) led to his clients' losses." Respondent admittedly had reviewed neither actual account records, such as bank statements and cancelled checks, nor purported account records that Anthony had prepared. Instead, respondent relied on "inadequate monthly reports" prepared by Anthony, which included no records. Respondent's review of the actual records would have revealed that the

balance of funds in the Carroll estate was less than it should have been, just two months after the $800,000 deposit. Likewise, respondent would have discovered that the balances for Fabrizio and Halloran were deficient.

The Appellate Division sustained charge five, finding that, if respondent had exercised reasonable management and supervisory authority over Anthony and the law firm accountant, Daniel Samela, he would have been aware of the unlawful disbursements from the IOLA accounts of funds belonging to the Carroll Estate, the Barons, Fabrizio, and Halloran. Moreover, he could have taken remedial action to avoid or mitigate the losses to those clients. Respondent's failure to do so violated New York former Code of Professional Responsibility DR 1-104(d)(2) (22 NYCRR 1200.5[d][2]).

In respect of charge seven, on March 1, 2004, $100,000 in settlement proceeds for client Sandra Crawford were deposited into the Signature Bank escrow account. Yet, as of March 17, 2004, only $47,779.71 of those funds remained, $52,220.29 having been improperly disbursed to the law firm. On April 8, 2004, the balance of Crawford's funds decreased to $2,695.88. Thereafter, on July 7, 2004, $20,000 was deposited into the Signature Bank account in behalf of client Danielle Alisio, who was entitled to $12,118.45 of those funds. Three weeks later, on August 3, 2004,

the account balance fell to $2,518.62, well below the amount required for her. On August 31, 2004, she received her share. In both the Crawford and Alisio matters, respondent failed to ensure that client funds held in the Signature Bank escrow account remained inviolate, in contravention of former Code of Professional Responsibility DR 9-102(a) and/or DR 1-102(a)(7) (22 NYCRR 1200.46 [a] and/or 1200.3 [a] [7]).

With regard to charge eight, from January 2004 through December 31, 2005, seventeen clients received disbursements from the Signature Bank escrow account. In "one or more" of the matters, the records showed disbursements in amounts greater than the actual amount on deposit for them in the escrow account. Moreover, most of the disbursements were to the law firm for expenses. In the absence of any meaningful review by respondent of the law firm's books and records for these matters, such as matching canceled checks with the appropriate client matters and conducting reconciliations of the escrow accounts, he had little opportunity to discover that Anthony had made improper disbursements and had forged respondent's signature on those disbursement checks. In this regard, respondent failed to take reasonable measures to ensure that the funds escrowed for these clients remained intact, violations of former Code of Professional Responsibility DR 9-102(a) and/or DR

1-102(a)(7) (22 NYCRR 1200.46[a] and/or 1200.3[a][7]).

Respondent, believing that the Signature Bank escrow account had been closed, intended that, subsequent to January 1, 2006, all client and third party escrow funds would be deposited into the M&T Bank escrow account. During 2006, however, escrow funds in seven personal injury matters were deposited into the Signature Bank account. According to charge nine, although those matters were under respondent's direct control, he failed to take reasonable steps to ensure that those escrow funds were deposited into the correct escrow account, a violation of DR 1-102(a)(7) (22 NYCRR 1200.3[a][7]).

In respect of charges ten and eleven, during 2004 and 2005, in a total of fifteen matters that included escrow funds in the amount of $938,447.23, deposits were made to the M&T and Signature Bank escrow accounts using electronic "web transfers." Respondent, however, failed to take reasonable steps to ensure that records were kept to reflect the source and nature of those transactions. Had he reviewed the bank records for the escrow accounts during those years or engaged in reviews with the accountant, he likely would have discovered this web activity. By failing to do so, respondent violated former Code of Professional Responsibility DR 9-102(e) and DR 9-102(d)(1) (22 NYCRR 1200.46[d][11).

Under charge twelve, in "one or more of" twenty-one client matters, funds were "not deposited appropriately" into the Signature Bank escrow account, from which disbursements were then made. In one or more of those matters, respondent failed to take reasonable steps to ensure that disbursements from that account "corresponded appropriately" to funds previously deposited therein. Thereafter, in several instances, funds were disbursed from the Signature Bank escrow account for matters that did not have a corresponding deposit, thereby placing other clients' funds at risk. Respondent acknowledged an inability to locate deposits corresponding to those disbursements. Respondent, therefore, violated former Code of Professional Responsibility DR 9-102(a), and/or DR 1-102(a)(7) (22 NYCRR 1200.46[a], and/or 1200.3[a][7]).

In what appears to be mitigation, the opinion notes that, unlike Galasso, respondent was not unjustly enriched when Anthony used misappropriated escrow monies to fund the purchase of the law office condominium. Rather, respondent used his own personal funds for that transaction. Additionally, respondent attempted to make restitution to some of his affected clients, namely the Carroll Estate, Adele Fabrizio, and Theresa Halloran.

By court order dated January 8, 2016, the New York authorities suspended respondent for six months. He was reinstated on April 13, 2016, and, in the Southern District of New York, on August 11, 2016.

Respondent submitted a July 17, 2017 affidavit in response to the OAE's motion for reciprocal discipline, in which he expressed his interest in "regaining" his New Jersey license. He also addressed the issue of sanction:

> I accept that reciprocal discipline is appropriate here. However, under the unique circumstances presented in this matter, I respectfully request that the period of suspension be imposed nunc pro tunc to coincide with the suspension [effective July 24, 2015] imposed in New York.

* * *

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline.

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

> 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 upon 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;

> (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.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (E).

"[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." R. 1:20-14(a)(5). Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

Respondent's six-month suspension in New York was imposed for misconduct equivalent to New Jersey RPC 1.15(a) (failure to safeguard client funds), RPC 1.15(d) and R. 1:21-6 (recordkeeping violations), and RPC 5.3(a) and (b) (failure to supervise nonlawyer employees).

Attorneys who fail to supervise their nonlawyer staff typically receive discipline ranging from an admonition to a

censure, depending on the presence of other ethics infractions, past discipline, or aggravating and mitigating factors. See, e.g., In re Bardis, 210 N.J. 253 (2012) (admonition for attorney who failed to reconcile and review his attorney records, thereby enabling an individual who helped him with office matters to steal $142,000 from his trust account, causing a shortage of $94,000; mitigating factors were the attorney's deposit of personal funds to replenish the account, numerous other corrective actions, his acceptance of responsibility for his conduct, his deep remorse and humiliation for not having personally handled his own financial affairs, and lack of a disciplinary record); In re Mariconda, 195 N.J. 11 (2008) (admonition for attorney who delegated his recordkeeping responsibilities to his brother, a paralegal, who then forged the attorney's signature on trust account checks and stole $272,000 in client funds); In re Deitch, 209 N.J. 423 (2012) (reprimand for attorney who failed to supervise his paralegal-wife, who stole client or third-party funds by negotiating thirty-eight checks payable to her, by either forging the attorney's signature or using a signature stamp; no prior discipline); In re Murray, 185 N.J. 340 (2005) (reprimand for attorney who failed to supervise non-attorney employees, which led to an unexplained misuse of client trust funds and to

negligent misappropriation; the attorney also failed to maintain books and records that would have revealed the mysterious scheme, specifically: client ledgers, receipts and disbursements journals, trust and business account bank statements and deposit slips, and cancelled checks; she also failed to perform quarterly reconciliations of her trust account and, for a time, failed to maintain an active trust account; prior admonition for similar deficiencies); and In re Key, 220 N.J. 31 (2014) (censure for attorney who failed to ensure that his nonlawyer employees recorded the attorney's time spent on client matters, a violation of RPC 5.3; the attorney also violated RPC 3.1 when, while his appeal from an adverse fee arbitration award was pending, he filed an answer to his clients' civil complaint seeking to enforce the award and asserted a counterclaim for the purpose of relitigating the reasonableness of his fee; the attorney knew that the court was without jurisdiction while the fee appeal was pending and, further, that he was barred from relitigating the fee arbitration panel's determination; further, after we dismissed his appeal from the fee award, he did not withdraw his counterclaim; the attorney also failed to record expenses and costs incurred on behalf of his clients, a violation of RPC 1.15(d); two prior admonitions and a reprimand for recordkeeping violations). But see In re Stransky, 130 N.J.

38 (1992) (one-year suspension for attorney who completely delegated the management of his attorney accounts to his wife/secretary/bookkeeper and improperly authorized her to sign trust account checks; over the course of one year, the attorney's wife embezzled $32,000 in client funds; the Court found that the attorney was "completely irresponsible in the management of his attorney accounts and totally abdicated his fiduciary responsibilities to his clients;" no mitigating factors noted).

Here, respondent's misconduct is most analogous to that of Stransky, who received a one-year suspension. Like Stransky, respondent completely delegated the management of his attorney accounts to his bookkeeper and was "completely irresponsible in the management of his attorney accounts and totally abdicated his fiduciary responsibilities to his clients."

In mitigation, respondent: (1) did not benefit from Anthony's thefts, as did Galasso; (2) attempted to reimburse his affected clients; and (3) has no prior discipline in thirty years at the New Jersey bar. In aggravation, respondent did not report his New York discipline to the OAE. In addition, we consider, in aggravation, the significant amount of funds that Anthony was able to misappropriate – $4.5 million.

In light of the above factors, we determine to impose a six-month suspension, the same sanction imposed in New York. Because respondent failed to report the New York disciplinary matter to the OAE, as required by the Rules, we recommend that the suspension be imposed prospectively.

Vice-Chair Baugh and Member Boyer 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 James R. Langione
Docket No. DRB 17-250

Argued: October 19, 2017

Decided: January 11, 2018

Disposition: Six-month Suspension

Members	Six-month Suspension	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