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SUPREME COURT OF NEW JERSEY

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November 26, 2018

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

Re: **In the Matter of John Nicholas Giorgi**
Docket No. DRB 18-289
District Docket No. XIV-2014-0167E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (censure or such lesser discipline as the Board deems appropriate) filed by the Office of Attorney Ethics (OAE), 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 censure is the appropriate quantum of discipline for respondent's violations of RPC 1.15(a) (commingling) and RPC 1.15(d) (recordkeeping).

Specifically, during the relevant time frame, respondent maintained an attorney trust account (ATA) at Unity Bank (Unity). On April 4, 2014, respondent caused a \$38,604.09 overdraft of his ATA, which Unity promptly reported to the OAE.

Prior to the OAE's receipt of the overdraft notice from Unity, respondent had self-reported the overdraft to the OAE by letter, dated April 7, 2014. In that letter, respondent asserted that the overdraft was caused by his mistaken belief that \$452,080.43 in proceeds from the sale of real estate had been deposited in his ATA. He, thus, had disbursed that same amount from his ATA to a third party. Specifically, on or about March 28, 2014, respondent sold real estate in Jersey City, on behalf of his limited liability company, Lunar Investments, LLC (Lunar).

On April 2, 2014, he mistakenly deposited the sale proceeds in Lunar's bank account. On April 3, 2014, having confirmed that the deposit had cleared, but mistakenly believing it had been made to his ATA, respondent wired \$452,080.43 from his ATA to NJR Properties, one of Lunar's investors.

On April 3, 2014, the day of the erroneous disbursement of ATA funds, respondent's ATA balance was \$79,395.91, including \$25,622.98 he was required to hold in behalf of his clients. Although the ATA exhibited negative balances for another Lunar matter (\$13,636.98), the recently closed Lunar matter (\$452,080.43), and for bank fees (\$35.00), it held a positive balance of \$517,525.34 for additional Lunar matters. Respondent represented to the OAE that all Lunar funds belonged to him, as the sole member of the company, and that he, thus, "could offset any negative Lunar ledger balances" and bank charges, due to the net positive Lunar ATA balance of \$51,772.93. Accordingly, the OAE determined that, as of April 3, 2014, no client funds were invaded as a result of respondent's erroneous disbursement of \$452,080.43 from his ATA.

On April 4, 2014, however, an ATA check in the amount of \$118,000, payable to Rosa Taveres, another of Lunar's investors, posted to respondent's ATA, overdrawing the aggregate Lunar ledger balance by \$66,227.07 and his general ATA balance by \$38,604.09, thereby invading the \$25,622.98 in client funds he was required to safeguard. The overdraft was directly caused by respondent's mistaken belief that he had deposited the \$452,080.42 in real estate sales proceeds in his ATA, which was his customary, albeit improper, practice in respect of Lunar's business dealings. On April 7, 2014, respondent transferred \$452,080.43 to his ATA from his Lunar account, thereby curing the shortfalls in his ATA.

Based on information and documentation respondent provided at a demand audit, held on October 7, 2014, the OAE concluded that respondent had been

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truthful in his explanation in respect of the mistaken deposit and subsequent overdraft. During that same audit, however, respondent admitted that he routinely had been commingling Lunar monies with client funds in his ATA, had been misusing his ATA as the business account for Lunar, and, further, that he had been failing to timely disburse funds from his ATA to himself and third parties. Moreover, the OAE determined that respondent had been engaging in some of the very same recordkeeping improprieties as those discovered during a 2001 audit – improprieties that he had represented had been corrected.

Respondent admitted that his misconduct resulted in the invasion of client funds. Generally, a reprimand is imposed for negligent misappropriation of client funds, even when accompanied by other, non-serious infractions, such as recordkeeping deficiencies, commingling, and failure to promptly deliver funds to clients. See, e.g., In re Clemens, 202 N.J. 139 (2010) (as a result of poor recordkeeping practices, attorney over-disbursed trust funds in three instances, causing a \$17,000 shortage in his trust account; an audit conducted seventeen years earlier had revealed virtually the same recordkeeping deficiencies, but the attorney was not disciplined for those irregularities; the above aggravating factor was offset by the attorney's clean disciplinary record of forty years); 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; the attorney had two prior reprimands, one of which stemmed from negligent misappropriation and recordkeeping deficiencies; mitigating factors considered); and In re Winkler, 175 N.J. 438 (2003) (attorney commingled personal and trust funds, negligently invaded clients' funds, and did not comply with the recordkeeping rules; the attorney withdrew from his trust account \$4,100 in legal fees before the deposit of corresponding settlement funds, believing that he was withdrawing against a "cushion" of his own funds left in the trust account).

Although a reprimand might otherwise be sufficient to address respondent's misconduct in this matter, we note that he has been the subject of prior discipline.

Specifically, on July 27, 2004, respondent received a three-month suspension for his violations of RPC 1.5 and Rule 1:21-7 (unreasonable fee), RPC 1.7(a) (conflict of interest), RPC 1.8(a) (prohibited transaction with client), RPC 1.8(e)

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financial assistance to client in connection with litigation), RPC 3.3(a)(1) (false statement of material fact to a tribunal), RPC 3.4(b) (counseling or assisting a witness to testify falsely), RPC 8.1(a) (misrepresentation in disciplinary matter), RPC 8.4(d) (conduct prejudicial to the administration of justice), and RPC 1.15(d) (recordkeeping) in connection with a personal injury action. In re Giorgi, 180 N.J. 525 (2004).

Thus, the Board considered, in aggravation, respondent's failure to learn from past mistakes, some of which also included recordkeeping violations. For that reason, combined with his egregious and intentional misuse of his attorney trust account in connection with his personal business interests, the Board determined that respondent's misconduct warrants a censure.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated August 17, 2018.
2. Stipulation of discipline by consent, dated August 14, 2018.
3. Affidavit of consent, dated August 6, 2018.
4. Ethics history, dated November 26, 2018.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/paa

Encls.

See Attached List

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c: (w/o enclosures)

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