Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-217
District Docket No. XIV-2014-0578E

In The Matter Of

Alexander T. Caiola

An Attorney At Law

Decision

Decided: December 14, 2018

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

This matter was before us on a certification of the record filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with violations of RPC 1.15(a) (commingling and failure to safeguard client funds); RPC 1.15(d) and R. 1:21-6 (recordkeeping); and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

For the reasons set forth below, we determine to impose a reprimand.

Respondent earned admission to the New Jersey bar in 1996. During the relevant time frame, he maintained a law practice in Plainfield and Linden, New Jersey. He has no disciplinary history. Respondent became ineligible to practice law on November 17, 2014 for failure to comply with New Jersey Continuing Legal Education (CLE) obligations, and again, on September 12, 2016 and June 4, 2018, based on his failure to comply with his annual registration requirements. He remains ineligible to date.

Service of process was proper in this matter. On April 2, 2018, the OAE sent a copy of the formal ethics complaint to respondent's counsel of record, Joseph Dolan, by certified and regular mail. A certified mail receipt was returned, signed by an "authorized agent" of Dolan's firm, Porzio, Bromberg & Newman, P.C., and the United States Postal Service confirmed delivery on April 5, 2018. The regular mail was not returned.

Despite the OAE's grant of multiple extensions of time, respondent failed to file a verified answer to the complaint.

On June 4, 2018, the OAE sent a "five-day" letter to Dolan, by certified and regular mail, informing counsel that, unless respondent filed a verified answer to the complaint within five days, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to

charge a willful violation of RPC 8.1(b). A certified mail receipt was returned, signed by an "authorized agent" of Dolan's firm, and the United States Postal Service confirmed delivery on June 8, 2018. The regular mail was not returned.

Because respondent had not filed an answer to the complaint, the OAE certified the record to us as a default.

We now turn to the allegations of the complaint.

During the relevant time frame, respondent was a solo practitioner, maintaining an attorney trust account (ATA) at Citibank. On October 8, 2014, Citibank alerted the OAE to an overdraft in the ATA. At the time of the overdraft, the ATA held no client funds. Respondent asserted that fraudulent activity caused the overdraft.

Upon investigating the overdraft, the OAE discovered the following recordkeeping violations in respect of respondent's law practice: failure to maintain ATA and business account receipts and disbursements journals; failure to maintain client ledger cards; failure to prepare monthly three-way reconciliations; electronic transfers without written authorization; prohibited cash and ATM withdrawals from the ATA; and a non-attorney signatory to the ATA. The OAE also determined that respondent commingled personal funds in

his ATA, and maintained a balance exceeding the $250 authorized to cover bank charges.

The OAE investigation revealed additional misconduct by respondent. Specifically, on May 31, 2013, respondent received $4,500, to be held in escrow in his ATA, in connection with the Lisa and Leonard Capriglione real estate transaction. The escrowed funds were earmarked to pay an outstanding judgment so that the transaction could close. Respondent represented Lisa Capriglione in family court matters, and knew that she and Leonard were selling their marital property in connection with their pending divorce. Moreover, he was aware that the escrow funds constituted marital property, and, consequently, were subject to division between Lisa and Leonard.

Subsequently, respondent learned that the judgment for which the escrow funds had been allocated had been discharged in a bankruptcy proceeding. On June 6, 2013, after both the real estate transaction and divorce had been completed, respondent disbursed $4,342 of the $4,500 escrow funds to Lisa, via an ATA check, without Leonard's knowledge or authorization. Respondent mistakenly believed that Lisa was entitled to the entirety of the escrow funds, minus his fee of $158, which he improperly withdrew from the ATA via an automated teller machine (ATM) transaction.

On January 8, 2016, the OAE and respondent, represented by Dolan, entered into an Agreement in Lieu of Discipline (ALD), whereby respondent admitted that, based on the above facts, he violated RPC 1.15(a) and RPC 1.15(d). Pursuant to the ALD, respondent was obligated to satisfy several conditions within six months, but failed to do so. Specifically, respondent failed to complete the New Jersey State Bar Association Diversionary Continuing Legal Education Program and failed to provide complete, monthly three-way reconciliations of the ATA. On February 9, 2016, respondent fulfilled one of the ALD conditions by sending Leonard Capriglione a $4,500 check.[1]

Respondent closed the ATA in October 2016, and failed to open a new attorney trust account until February 2017. On June 6, 2017, the OAE directed respondent, through Dolan, to produce attorney trust and business account statements, three-way trust account reconciliations, trust and business account receipts and disbursements journals, and client ledger cards for the period of February through May 2017. Additionally, the OAE requested proof that respondent had rectified his CLE status. As of March 26, 2018, the date the

[1] Given that respondent received $4,500 in escrow, and disbursed $4,342 to Lisa, $158 to himself as his fee, and $4,500 to Leonard, either the figures in the complaint are erroneous, respondent overdisbursed $4,500, or respondent paid Leonard with his own funds.

formal ethics complaint was filed, respondent had failed to produce the financial records requested by the OAE, failed to address his CLE ineligibility, and failed to demonstrate compliance with R. 1:21-6, the recordkeeping Rule.

On June 29, 2018, subsequent to the OAE's certification of the record to us, Dolan informed the OAE that respondent had failed to meet with him to review the complaint and to prepare a verified answer, despite multiple extensions of time having been granted by the OAE. Dolan further disclosed that respondent "is out of the country and we do not know when he will [be] returning."

On July 27, 2018, having received the default scheduling letter in this matter, respondent e-mailed the Office of Board Counsel (OBC), asserting that the OAE had refused to discuss his case directly with him, due to his represented status, and providing Dolan's contact information. That same date, OBC Chief Counsel forwarded respondent's e-mail to Dolan, requesting clarification as to whether he still represented respondent. Dolan failed to reply to the OBC. Respondent did not seek to vacate the default.

The facts recited in the formal ethics complaint support all of the charges of unethical conduct set forth therein. Respondent's failure to file a verified answer to the complaint is deemed an admission that the allegations of

the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Following the ATA overdraft alert, the OAE's investigation revealed that respondent routinely commingled personal funds in the ATA, and improperly maintained a balance exceeding the $250 authorized to cover bank charges. Respondent, thus, violated RPC 1.15(a) by commingling funds.

The OAE's investigation also revealed that respondent had improperly disbursed escrow funds in respect of the Capriglione matter. Specifically, respondent was aware that $4,500 in escrow funds constituted marital property, and, thus, was subject to division between Lisa and Leonard. Yet, after both the real estate transaction and divorce had been completed, respondent released $4,342 from the escrow funds to Lisa, without Leonard's knowledge or authorization. Respondent, thus, violated RPC 1.15(a) by failing to safeguard escrow funds.

Moreover, the OAE's investigation revealed numerous recordkeeping violations, in contravention of R. 1:21-6, including failure to maintain ATA and business account receipts and disbursements journals; failure to maintain client ledger cards; failure to prepare monthly three-way reconciliations; electronic transfers without written authorization; prohibited cash and ATM withdrawals from the ATA; and a non-attorney signatory to the ATA.

Additionally, in respect of the Capriglione matter, respondent improperly withdrew his $158 legal fee from his ATA via an ATM. Respondent, thus, violated RPC 1.15(d).

Finally, respondent failed to cooperate with the OAE by failing to provide complete, monthly three-way reconciliations of his ATA, as well as basic financial records demanded by the OAE. He also failed to file a verified answer to the complaint, despite his counsel's attempts to assist him. Respondent, thus, violated RPC 8.1(b).

In summary, we determine that respondent violated RPC 1.15(a), RPC 1.15(d), and RPC 8.1(b).

The only remaining issue is the appropriate quantum of discipline to be imposed for respondent's diverse misconduct.

Admonitions have been imposed on attorneys who engage in commingling and recordkeeping violations, in the absence of negligent misappropriation. See, e.g., In the Matter of Richard Mario DeLuca, DRB 14-402 (March 9, 2015) and In the Matter of Dan A. Druz, DRB 10-404 (March 3, 2011).

Attorneys have received admonitions or reprimands for the improper release of escrow funds, in violation of RPC 1.15(a), even if a violation of RPC 1.15(b), an infraction not charged in this case, is found. See, e.g., In the

Matter of Joseph Jerome Fell, DRB 10-328 (January 25, 2011) (admonition for attorney who improperly released $325,000 in escrow funds to his client, the seller of a one-third interest in a business, without verifying that certain contingencies had been satisfied); In the Matter of Michael D. Landis, DRB 09-395 (March 19, 2010) (admonition for attorney who improperly released $86,500 in disputed escrow funds to his client, the buyer under a contract of sale to purchase residential property, in violation of a contractual provision requiring the deposit of disputed escrow funds with the court); In re Spizz, 140 N.J. 38 (1995) (admonition for attorney who, against a court order, released to his client funds escrowed for the fees of a former attorney, and misrepresented to the court and to the former attorney that the funds remained in escrow; the attorney asserted that the former attorney had either abandoned or waived her claim for the fee, and that, thus, his obligation to hold the funds had ended); In re De Clement, 214 N.J. 47 (2013) (motion for discipline by consent; reprimand for attorney who failed to safeguard funds in which a client or third party had an interest, and released a portion of $75,000 he had agreed to hold in escrow, in connection with a joint venture agreement between his client and a third party, without first obtaining the third party's consent; no escrow provision governed the attorney's actions, but the $75,000 check deposited by the attorney included a notation identifying it as an escrow deposit, and the

joint venture agreement identified the attorney as the "escrow attorney;" the attorney, however, was never provided a copy of the joint venture agreement, and improperly relied on his client's assurance that he was allowed to use a portion of the escrow funds to cover expenses associated with the joint venture); In re Holland, 164 N.J. 246 (2000) (reprimand for attorney who was required to hold, in trust, a disputed fee in which she and another attorney had an interest; instead, the attorney took the fee, in violation of a court order; the attorney claimed that she believed that a subsequent court order had entitled her to the entire fee, and, thus, she had made a mistake, rather than knowingly defied a court order; those defenses were rejected); and In re Milstead, 162 N.J. 96 (1999) (reprimand for attorney who disbursed escrow funds to a client, in violation of a consent order).

As we summarized in De Clement, in the cases cited above, the attorneys held reasonable, although mistaken, beliefs that, for one reason or another, the release of escrow funds was appropriate. In the Matter of David M. De Clement, DRB 12-390 (June 11, 2013). Stated differently, the above cases can be characterized as fact patterns where "premature disbursement," or disbursement under a colorable dispute occurred. Similarly, here, the complaint alleged that respondent mistakenly believed that Lisa was entitled to all of the escrow funds, less his fee.

Admonitions are typically imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history. See, e.g., In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (attorney failed to reply to repeated requests for information from the district ethics committee investigator regarding his representation of a client in three criminal defense matters, a violation of RPC 8.1(b)); In re Gleason, 220 N.J. 350 (2015) (attorney did not file an answer to the formal ethics complaint and ignored the district ethics committee investigator's multiple attempts to obtain a copy of his client's file, a violation of RPC 8.1(b); the attorney also failed to inform his client that a planning board had dismissed his land use application, a violation of RPC 1.4(b)); and In the Matter of Raymond A. Oliver, DRB 12-232 (November 27, 2012) (attorney failed to submit a written reply to the grievance or a copy of the filed pleadings in the underlying case, despite repeated assurances that he would do so, a violation of RPC 8.1(b)).

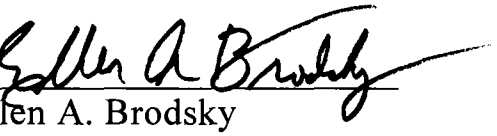
Here, we consider, in aggravation, the default status of this matter. "A respondent's default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008). The only mitigation to consider is respondent's lack of a disciplinary history.

Absent the default component, an admonition would be warranted for respondent's violations of RPC 1.15(a), RPC 1.15(d), and RPC 8.1(b). Given the default status of this matter, however, we determine to enhance the sanction to a reprimand.

Member Gallipoli was recused. Member 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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Alexander Thomas Caiola
Docket No. DRB 18-217

Decided: December 14, 2018

Disposition: Reprimand

Members	Reprimand	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer	X		
Gallipoli		X	
Hoberman			X
Joseph	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	7	1	1

Ellen A. Brodsky
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