DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 962
TRENTON, NEW JERSEY 08625-0962
(609) 815-2920

October 21, 2020

Heather Joy Baker, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: **In the Matter of Santo V. Artusa, Jr.**
Docket No. DRB 20-184
District Docket No. XIV-2018-0127E

Dear Ms. Baker:

The Disciplinary Review Board has 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) in the above matter, pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion and to impose a censure for respondent's violation of RPC 1.15(d) (failure to comply with the recordkeeping provisions of R. 1:21-6); RPC 8.1(b) (failure to cooperate with disciplinary authorities); RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Specifically, on May 11, 2018, respondent opened an attorney trust account at Bank of America. At some point, respondent also opened an attorney business account and two personal checking accounts at Bank of America (BoA). Respondent had failed to maintain an attorney trust account from April 2015 to May 2018. Moreover, between 2015 and 2017, he deposited in his personal bank account, rather than an attorney business account, a number of client checks, representing payment toward his legal fees.

Between July 2017 and February 2018, respondent issued and presented to the Hudson Vicinage sixteen personal checks, in amounts ranging from $50 to $325, totaling $3,353, all of which were returned for insufficient funds. Although respondent claimed that he had overdraft protection for the BoA personal checking account and, thus, was unaware that the personal checks had been returned, only four checks were paid. Fortunately, despite the overdrafts, the clients'

matters proceeded apace.

The returned checks listed respondent's home address. By letter dated January 29, 2018, sent to that address, the Hudson Vicinage informed him that the checks had been returned for insufficient funds. According to respondent, at that time, he was separated from his wife. He failed to change his mailing address, as required, and, consequently, did not receive the Vicinage's letter sent to his home address.

Respondent claimed that his first notice of the returned checks was a March 26, 2018 letter from the OAE, which, presumably, transmitted to respondent a copy of the referral letter from the Hudson Vicinage Trial Court Administrator, Silvia I. Gonzalez, and requested a written explanation. Respondent denied having received any letters from the Superior Court.

Respondent stated that, when he received the OAE's March 26, 2018 letter, he contacted the Department of Treasury (Treasury) to determine the total amount owed for the returned checks. He represented to Treasury that, once he received that information, including the amount due and the identity of the payee, he would properly disburse the funds. As of March 26, 2019, however, respondent had not repaid the monies and, thus, all the returned checks, totaling $4,978, had been placed in collection.[1] Respondent conceded that, pursuant to N.J.S.A. 2C:21-5 (the bad check statute), an inference may be drawn that, when he issued the checks, he knew that they would not be paid.

During a May 9, 2019 OAE telephone interview, respondent claimed that he owed only $700 to the Treasury, because BoA had covered some of the bad checks. Although the OAE directed respondent to produce records reflecting the repayment of the remaining bad checks, he failed to comply with the OAE's request.

During its investigation, the OAE directed respondent to produce bank statements; monthly three-way reconciliations; receipts and disbursements journals; and client ledger cards for those clients whose funds were maintained in his BoA trust account from October through December 2018. Respondent provided only the bank statements.

Based on the above facts, the parties stipulated, and the Board found, that respondent violated RPC 1.15(d), by failing to comply with numerous recordkeeping rules. Respondent also admitted, and the Board found, that he failed to cooperate with disciplinary authorities, a violation of RPC 8.1(b), by failing to comply with the OAE's request that he turn over monthly three-way reconciliations, receipts and disbursements journals, and client ledger cards for those clients whose funds were maintained in his BoA trust account from October through December 2018.

Although respondent admitted that he committed a third-degree crime by passing bad checks, the Board determined that the facts support a fourth-degree crime, pursuant to N.J.S.A.

[1] The stipulation does not explain the discrepancy between the $3,353 and $4,978 figures.

2C:21-5(c)(3) (checks of $200 to $999.99). The bad checks that respondent issued ranged in amounts from $50 to $325.[2] Respondent, thus, violated RPC 8.4(b).

By passing bad checks, respondent also violated RPC 8.4(c), which prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. Respondent initially may have been unaware that his checks would bounce, but he engaged in this behavior for a period of many months and, thus, had to know, at some point, that there was a problem. Yet, he continued to pass bad checks to the Vicinage and failed to make good on them, even after notice from the OAE.

The Board determined to impose a censure for respondent's ethics infractions. In support of its determination, the Board noted that, standing alone, failure to cooperate with disciplinary authorities and recordkeeping violations that do not result in the negligent misappropriation of client funds each warrant an admonition. 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)); 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)); In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015) (recordkeeping; no misappropriation); In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014) (recordkeeping; no misappropriation); and In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014) (recordkeeping; no misappropriation). Here, despite the return of multiple checks for insufficient funds, the record contains no evidence of respondent's negligent misappropriation of client or escrow funds. Thus, the OAE must have been satisfied that there was no invasion.

In the absence of negligent misappropriation and a disciplinary history, and based on the above precedent, an admonition would have been the appropriate form of discipline for respondent's violation of RPC 1.15(d) and RPC 8.1(b). However, the Board also considered respondent's RPC 8.4(b) and (c) violations.

Few cases have addressed the disciplinary consequences imposed on attorneys who pass bad checks. Due to the inapplicability of the those cases to the facts of this matter, the Board examined disciplinary precedent in respect of criminal misconduct of an analogous nature, in order to fashion the appropriate measure of discipline in this matter.

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[2] The three $50 checks constituted a disorderly persons offense, under N.J.S.A. 2C:21-5(c)(4), because they were less than $200.

Recently, in In re Alper, 242 N.J. 143 (2020), the Court imposed a reprimand on an attorney who had been employed as the Director of Operations by Marine Transport Logistics (MTL), a shipping company owned by his parents-in-law. In the Matter of Vadim Alper, DRB 19-194 (January 14, 2020) (slip op. at 2). After a falling out, Alper's in-laws stopped paying his earned commissions. Ibid.

Alper formed a competitor company and left MTL. Id. at 2-3. He then used the information that he had acquired at MTL to access an MTL database and calculate the commissions owed to him. Id. at 4. Alper stipulated to having violated RPC 8.4(b) and (c). Id. at 5. Although there was no case law directly on point, the Board determined the appropriate measure of discipline to impose on Alper by examining cases involving thefts by attorneys and conduct involving less serious criminal acts. Id. at 6-7. The Board did the same in this matter.

Generally, theft by an attorney results in a period of suspension, the length of which depends on the severity of the crime and mitigating or aggravating factors. See, e.g., In re Pariser, 162 N.J. 574 (2000) (six-month suspension for deputy attorney general (DAG) who pleaded guilty to one count of third-degree official misconduct for stealing items, including cash, from coworkers; his conduct was not an isolated incident, but a series of petty thefts occurring over a period of time; the attorney received a three-year probationary term and was ordered to pay a $5,000 fine, to forfeit his public office as a condition of probation, and to continue psychological counseling until medically discharged; the attorney's status as a DAG was considered an aggravating factor); In re Burns, 142 N.J. 490 (1995) (six-month suspension for attorney who committed three instances of burglary of an automobile, two instances of theft by unlawful taking, and one instance of unlawful possession of burglary tools); In re Kopp, 206 N.J. 106 (2011) (retroactive three-year suspension for identity theft, credit card theft, theft by deception, and burglary; the attorney used the fruits of her criminal activity to support her addiction; mitigating factors included her tremendous gains in efforts at drug and alcohol rehabilitation); In re Bevacqua, 185 N.J. 161 (2005) (three-year suspension for attorney who used a stolen credit card to attempt to purchase merchandise at a store, and had five additional fraudulent credit cards and a fake driver's license in his possession at the time; prior reprimand and six-month suspension); and In re Meaden, 165 N.J. 22 (2000) (three-year suspension for attorney who wrongfully obtained the credit card number of a third party, then attempted to commit theft by using the credit card number to purchase golf clubs worth $5,800, and made multiple misrepresentations on firearms purchase identification cards and handgun permit applications by failing to disclose his psychiatric condition and involuntary commitment; prior reprimand).

Here, as in Alper, the Board concluded that conduct involving less serious criminal acts generally results in the imposition of an admonition or a reprimand. See, e.g., In the Matter of Michael E. Wilbert, DRB 08-308 (November 11, 2009) (admonition for possession of eight rounds of hollow-point bullet ammunition, a violation of N.J.S.A. 2C:39-3(f), and possession of an over-capacity ammunition magazine, in violation of N.J.S.A. 2C:39-3(j), fourth-degree crimes for which the attorney was admitted into PTI); In re Murphy, 188 N.J. 584 (2006) (reprimand imposed on attorney who twice presented his brother's driver's license to police in order to avoid

prosecution for driving-under-the-influence charges, in violation of RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d); in addition, the attorney failed to cooperate with the OAE's investigation of the matter, in violation of RPC 8.1(b)); and In re LaVergne, 168 N.J. 409 (2001) (reprimand for attorney found guilty in municipal court of theft by failure to make required disposition of property received, a disorderly persons offense; the attorney entered into an agreement to purchase an automobile, never made payment, and instead took possession of the vehicle and allowed it to be registered to a new owner).

In Alper, the Board noted, in mitigation, that the attorney had stipulated to the violations and had an unblemished disciplinary record during his ten years at the bar. Further, there were no aggravating factors. In the Matter of Vadim Alper, DRB 19-194 (January 14, 2020) (slip op. at 8). The Board also observed, however, that Alper had "repeatedly engaged in the unauthorized, covert access to the MTL database, using another's credentials, knowing that he was not authorized to do so." Ibid. Thus, on balance, a reprimand was sufficient to protect the public and preserve confidence in the bar. Ibid. The Court agreed. In re Alper, 242 N.J. 143.

Here, the Board concluded that this case is more akin to Alper than it is to the other theft cases. Although respondent passed bad checks, he did not do so as part of a scheme to receive anything of personal value in return. Similar to the attorney in Alper, respondent stipulated to his violations; has been a member of the bar for eleven years; and has no disciplinary history. In aggravation, respondent repeatedly engaged in the most egregious misconduct – the passing of bad checks. In further aggravation, he was passing bad checks to the court. In the Board's view, the aggravating factors outweighed those in mitigation. Thus, the Board determined to impose a censure.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated July 21, 2020.
2. Stipulation of discipline by consent, dated July 21, 2020.
3. Affidavit of consent, dated July 10, 2020.
4. Ethics history, dated October 21, 2020.

Very truly yours,

/s/ Ellen A. Brodsky

Ellen A. Brodsky
Chief Counsel

Enclosures
c: See attached list

(w/o enclosures)
Bruce W. Clark, Chair
Disciplinary Review Board (e-mail)
Charles Centinaro, Director
Office of Attorney Ethics (e-mail and interoffice mail)
Johanna Barba Jones, Assistant Ethics Counsel, Presenter
Office of Attorney Ethics (e-mail)
Peter R. Willis, Esq., Respondent's Counsel (e-mail and regular mail)