Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-060
District Docket No. XIV-2019-0377E

In the Matter of	:
Howard L. Sosnik	:
An Attorney at Law	:

Decision

Argued: September 17, 2020

Decided: February 2, 2021

Ashley Kolata-Guzik 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), following an order from the Appellate Division of the Supreme Court of New York, Second Judicial Department (the Second Judicial Department), suspending respondent for six months, effective June 28, 2019. The OAE asserted that respondent was

found guilty of violating the equivalents of New Jersey RPC 1.15(a) (failure to safeguard client funds), RPC 1.15(d) (failure to comply with the recordkeeping provisions of R. 1:21-6), and RPC 5.3(a) and (b) (failure to supervise nonlawyer staff).

For the reasons set forth below, we determine to grant the OAE's motion and impose an admonition.

Respondent earned admission to the New Jersey bar in 1992; the Georgia bar in 1984; the New York bar in 1986; and the Florida bar in 1996. At the relevant times, he maintained an office for the practice of law in Garden City, New York. Respondent has no disciplinary history in New Jersey.

We turn now to the facts of this matter.

This case involves the theft of $202,530 in client funds from respondent's attorney trust account (ATA), committed by his employee of eighteen years, Soncerie Cornegy.

Respondent attended law school after receiving an undergraduate degree, in accounting, in 1981. He then worked in Atlanta for the accounting firm Coopers & Lybrand. Although he passed the certified public accountant exam, he was never licensed. After one year, he attended New York University to earn an LLM degree in taxation, and then worked for the accounting firm Mudge

Rose Guthrie Alexander & Ferdon (Mudge Rose).

Subsequently, respondent worked at the law firm of Cohn Lifland Perlman Hermann & Knopf, for two years, as head of its tax, trusts, and estates department. In 1994, respondent; Louis Karol, an attorney respondent had met when they worked as accountants at Coopers & Lybrand, and Mudge Rose; and Michael Hausman formed Karol Hausman & Sosnik, P.C. (the firm), which specialized in wealth preservation, estate planning and administration, and elder care planning.

Soncerie Cornegy, an employee of the firm for approximately eighteen years, had a multitude of responsibilities, including, for about ten years, conducting the firm's banking and bookkeeping tasks. Prior to the discovery of Cornegy's theft from the firm, respondent considered her "family," and believed she was reliable, honorable, and a hard worker.

The firm generated approximately $4 to 5 million in revenue annually, and the ATA was primarily used for real estate matters. Cornegy collaborated with the firm's eleven attorneys to form necessary ATA sub-accounts and to execute transfers from the sub-accounts to the master ATA account. All the firm's ATA records were kept in Cornegy's office. Respondent admitted that he failed to properly review, audit, and reconcile the firm's ATA, and failed to supervise Cornegy's control over the ATA.

On April 29, 2013, when Karol attempted to rent a car, he discovered that two linked Avis accounts existed – one in the firm's name and one in Cornegy's name. Karol attempted to contact Cornegy, but she was unavailable. Although Karol found it odd that Cornegy's Avis account was linked to the firm's account, the firm was not concerned about the circumstances.

That same day, however, Cornegy notified the firm that she was not going to work that day; she also called out the next day. She did not speak to any of the partners during those calls. On May 1, 2013, she informed a firm employee that she no longer wanted to work at the firm, but would reimburse the firm for the Avis account. Respondent was shocked, believed Cornegy was embarrassed about the Avis account, and wanted her to return to work. He did not connect Cornegy's abrupt departure to the firm's finances or ATA.

On May 3, 2013, the firm learned that a check sent to another attorney had been rejected for insufficient funds. Respondent knew that a dishonored ATA check would be questioned and, on May 7, 2013, reported the overdraft to New York disciplinary authorities, which began an investigation. Respondent initially did not attribute the overdraft to Cornegy, and did not conduct a reconciliation of the master ATA, because his preliminary investigation revealed that the overdraft had occurred because the check was an over-disbursement sent in error. Moreover, the attorney already had received the relevant funds.

Then, on May 8, 2013, Chase Bank informed respondent that the ATA had insufficient funds to cover a $5,145 ATA check that the firm had issued. The bank representative told respondent to review the account online, which puzzled him, because he was unaware that the ATA was accessible online. As it turned out, Cornegy had implemented online access, which permitted electronic transfers, all without respondent's knowledge.

Respondent began to investigate the reason for the insufficient funds in the firm's ATA account. However, when he attempted to retrieve the ATA records from Cornegy's office, he discovered that all her file cabinets were empty. A firm employee informed respondent that, in April 2013, Cornegy was seen leaving the firm at night, with shopping bags, which respondent concluded contained the missing financial records. Nevertheless, respondent was able to quickly complete a reconstruction of the ATA, and concluded that there was an $80,000 shortage. By reviewing online records, respondent discovered that Cornegy had transferred money between the firm's ATA, operating account, and payroll account, for no apparent reason. Respondent, Karol, and Hausman immediately deposited $100,000 of their personal funds to cure the shortage in the ATA.

Respondent and the firm then hired the accounting firm of Hoberman & Lesser, LLP (Hoberman) to reconstruct the firm's transactions for the prior five

years. The forensic reconstruction revealed that Cornegy had been improperly transferring funds for more than three years. Hoberman discovered an aggregate $202,530 shortfall in the ATA, plus $42,524 that Cornegy had improperly charged to a firm credit card. On November 25, 2013, respondent, Karol, and Hausman deposited an additional $102,530 in personal funds to cure the shortfall in the ATA.

During the time period at issue, the firm would "spot-check" the ATA sub-accounts to ensure that the credits and debits for real estate transactions were identical. Respondent, however, consistently failed to review the master ATA or to perform reconciliations for non-real estate transactions. Respondent testified that a law firm attorney reviewed each real estate transaction, and there had never been a transaction where the debits and credits did not match. Also during this time, the firm had retained Baron Bergstein & Weinberg, CPAs (Baron) to prepare the firm's tax returns and to perform "spot-checks" on the firm's operating account, but respondent later learned that Cornegy would select the month for review and provide the monthly statement and, thus, was able to manipulate Baron's review and conceal her thefts.

Respondent, Karol, and Hausman decided not to report Cornegy to law enforcement, because (1) as fiduciaries, they were charged with protecting their clients; (2) they believed it unlikely that they would recover any funds from

Cornegy, because she did not own a home, and the Internal Revenue Service and creditors had been contacting the firm attempting to reach her; and (3) they believed that any publicity resulting from an investigation would have been "devastating" to the firm.[1]

The Grievance Department for the Tenth Judicial District (Grievance Department) filed a petition charging respondent with ethics violations, which respondent admitted. After the special referee sustained the charges, the Grievance Department moved to confirm the special referee's report. Respondent supported the motion to confirm the report and urged the imposition of a public censure. The Supreme Court of New York, Appellate Division, Second Judicial Department (the Appellate Division) rejected respondent's proffered mitigation that there were no warning signs of Cornegy's theft, determining that, although he was unaware that she had instituted online banking, all the improper transfers appeared on the paper monthly bank statements that the firm received. The Appellate Division found that, if the firm had provided proper supervision, including a review of the ATA and online transfers, the transfers between the ATA, operating, and payroll accounts,

[1] After the incident, Michael Hausman left the firm, and respondent and Karol became partners in a new firm, Karol & Sosnik. Respondent has instituted strict protocols within the new firm to avoid a recurrence of the misconduct, including conducting monthly independent reconciliations, and reviewing all account statements, both personally and with a bookkeeper.

"should have served as an early warning to the respondent and his partners to undertake greater scrutiny of the escrow account transactions."

In mitigation, the Appellate Division considered that respondent contributed to replenishing the stolen ATA funds so that no client sustained a continued loss; accepted responsibility for his misconduct; exhibited candor and remorse; had no "venal intent;" instituted remedial actions to avoid a recurrence; provided evidence of good character; and had an unblemished disciplinary history in over thirty-two years at bar.

In addition, at the hearing before the special referee, respondent testified that, since 2009, he has suffered from Crohn's disease; has been very active in the Crohn's and Colitis Foundation, by raising funds and awareness; served as past president of the Long Island Chapter; and currently serves as an active board member. Further, in reference to Cornegy's transgressions, respondent testified that "other than the death of a family member this is the worst thing that's ever happened to me in my life. It's devastating . . . I've had endless sleepless nights over the past five years, and I guess that the absolute only peace that I get out of any of this is that I know that no client has ever been harmed."

On May 29, 2019, the Appellate Division imposed a six-month suspension on respondent, effective June 28, 2019.

By letter dated June 20, 2019, respondent's counsel reported his New York discipline to the OAE, represented that respondent will cease practicing law in New Jersey on June 28, 2019, the effective date of his New York suspension, and consented to the imposition of reciprocal discipline in New Jersey.

The OAE recommends the imposition of a reprimand or censure. In support of a censure, the OAE emphasized respondent's failure to report Cornegy's crimes to law enforcement because of the likely negative effect on the firm, thus, placing his self-interest above the public interest. As a result, he "allowed her the opportunity to obtain other legal employment and continue her misappropriation of client funds at a different law firm."

In a letter to us, received March 3, 2020, respondent, now pro se, opposed neither the motion nor the OAE's recommended sanction.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), "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." 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).

In New York, "[i]t has consistently been held by the Appellate Divisions that the standard of proof in attorney disciplinary proceedings is a fair preponderance of the evidence." In re Capoccia, 453 N.E.2d 497, 498 (N.Y. 1983). We note that, in this matter, respondent admitted to his violations of New York's RPCs, but not the quantum of 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 the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on 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 following in the foreign disciplinary 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.

Subsection (E) applies in this matter because the unethical conduct warrants substantially different discipline.

Respondent admitted to the underlying conduct that violated each charge of the New York Rules of Professional Conduct. A review of the record supports these admissions, which constitute violations of the New Jersey Rules of Professional Conduct. Specifically, respondent violated RPC 1.15(a) by failing to safeguard client funds, resulting in the misappropriation of client funds by his employee, Cornegy. Further, respondent violated RPC 1.15(d) by completely abrogating his recordkeeping responsibilities to Cornegy.

Finally, respondent violated RPC 5.3(a) and (b) by failing to ensure that Cornegy's conduct was compatible with his professional obligations and by failing to supervise Cornegy, to whom he completely abrogated his recordkeeping and banking responsibilities, resulting in her theft of over $202,000 in client funds. If respondent had simply reviewed the online transfers between the firm's accounts, or reviewed the firm's paper bank statements, he would have immediately discovered Cornegy's transgressions. Rather, he wholly failed to comply with his recordkeeping duties, which allowed Cornegy to perpetrate the prolonged theft.

In sum, we find that respondent violated the equivalent of New Jersey RPC 1.15(a), RPC 1.15(d), and RPC 5.3(a) and (b). The only remaining issue

for our determination is the appropriate quantum of discipline to be imposed for respondent's misconduct.

The core of respondent's misconduct is his failure to properly supervise his nonlawyer bookkeeper. Attorneys who fail to supervise their nonlawyer staff typically receive an admonition or a reprimand, depending on the presence of other ethics infractions, prior discipline, or aggravating and mitigating factors. See, e.g., In the Matter of Vincent S. Verdiramo, DRB 19-255 (January 21, 2020) (admonition; as a result of attorney's abrogation of his recordkeeping obligations, his nonlawyer assistant was able to steal more than $149,000 from his trust account; mitigating factors were the attorney's prompt actions to report the theft to affected clients, law enforcement, and disciplinary authorities; his deposit of $55,000 in personal funds to replenish the account; his extensive remedial actions; his acceptance of responsibility for his misconduct; and his unblemished, thirty-three year career); In the Matter of Jill Cadre, DRB 19-283 (November 25, 2019) (admonition by consent for attorney who failed to supervise her employee, upon whom she relied almost completely to handle the attorney trust account bookkeeping; the employee stole $783,809.97 in client funds; the attorney failed to safeguard client funds in violation of RPC 1.15(a) and failed to perform recordkeeping obligations pursuant to RPC 1.15(d); in mitigation, the attorney retained an accounting firm to identify all fraudulent

activity; expressed genuine remorse; cooperated with the investigation; promptly reimbursed the stolen funds; and submitted letters attesting to her good character; no prior discipline in sixteen years at the bar); In re Bardis, 210 N.J. 253 (2012) (admonition; as a result of attorney's failure to review and reconcile his attorney records, his bookkeeper was able 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 misconduct; his deep remorse and humiliation for not having personally handled his own financial affairs; and his lack of a disciplinary record); In re Deitch, 209 N.J. 423 (2012) (reprimand; as a result of attorney's failure to supervise his paralegal-wife and poor recordkeeping practices, $14,000 in client or third-party funds were invaded; the paralegal-wife stole the funds by negotiating thirty-eight checks issued to her by forging the attorney's signature or using a signature stamp; no prior discipline); In re Murray, 185 N.J. 340 (2005) (attorney reprimanded for failure to supervise nonlawyer employees, which led to the unexplained misuse of client trust funds and to negligent misappropriation; the attorney also committed recordkeeping violations); and In re Bergman, 165 N.J. 560 (2000) and In re Barrett, 165 N.J. 562 (2000) (companion cases; attorneys reprimanded for failure to supervise secretary/bookkeeper/office manager, who embezzled almost $360,000 from the

firm's business and trust accounts and from a guardianship account; the attorneys cooperated with the OAE, hired a CPA to reconstruct the account, and brought their firm into full compliance with the recordkeeping rules; a bonding company reimbursed the losses caused by the embezzlement).

Recordkeeping irregularities ordinarily are met with an admonition, so long as they have not caused a negligent misappropriation of clients' funds. See, e.g., In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015); In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014); and In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014).

Here, respondent's circumstances are most like those of the attorneys in Verdiramo, Cadre, and Bardis, who received admonitions, had no disciplinary history, and cooperated with the OAE. The attorneys completely abdicated their bookkeeping duties and, instead, exclusively and improperly relied on one trusted individual to manage the firm finances. In Verdiramo, the attorney relied on a long-term secretary who perpetuated the theft, but also employed another bookkeeper who reviewed the financials several times per month; the attorney himself would inquire monthly as to the status of the accounts, and still received an admonition. In the instant matter, respondent admitted that he relied entirely on Cornegy, a long-time trusted employee who was like "family," to conduct the firm's banking and recordkeeping obligations.

Further, we considered the aggravating and mitigating factors. In recommending the enhancement of a reprimand to a censure, the OAE relied on the fact that respondent did not report Cornegy's crimes to law enforcement because of the likely negative effect on the firm, thereby placing his own interests above those of the public, and, as a result, he "allowed her the opportunity to obtain other legal employment and continue her misappropriation of client funds at a different law firm." In Verdiramo and Bardis, however, the attorneys did not pursue law enforcement prosecution of the offending employee, and those attorneys received admonitions.

In mitigation, respondent has no disciplinary history in twenty-eight years at the New Jersey bar; readily admitted his misconduct and cooperated with the investigation; hired an accounting firm to identify stolen funds and then quickly replenished the stolen funds; corrected all recordkeeping deficiencies; expressed remorse; performs service to the community; and reported his New York discipline to the OAE.

Considering the lack of aggravating factors and the presence of compelling mitigation, we determine to grant the motion for reciprocal discipline and impose an admonition.

Member Zmirich voted to impose a reprimand. Member Petrou was recused. Members Joseph and Rivera 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
Bruce W. Clark, Chair

By: **/s/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Howard L. Sosnick
Docket No. DRB 20-060

Argued: September 17, 2020

Decided: February 2, 2021

Disposition: Admonition

Members	Admonition	Reprimand	Recused	Did Not Participate
Clark	X			
Gallipoli	X			
Boyer	X			
Hoberman	X			
Joseph				X
Petrou			X	
Rivera				X
Singer	X			
Zmirich		X		
Total:	5	1	1	2

/s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel