

DISCIPLINARY REVIEW BOARD
OF THE
SUPREME COURT OF NEW JERSEY

BRUCE W. CLARK, ESQ., CHAIR
HON. MAURICE J. GALLIPOLI, VICE-CHAIR
PETER J. BOYER, ESQ.
THOMAS J. HOBERMAN
REGINA WAYNES JOSEPH, ESQ.
PETER PETROU, ESQ.
EILEEN RIVERA
ANNE C. SINGER, ESQ.
ROBERT C. ZMIRICH



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

JOHANNA BARBA-JONES
CHIEF COUNSEL

TIMOTHY M. ELLIS
DEPUTY COUNSEL
BARRY R. PETERSEN, JR.
DEPUTY COUNSEL

JESSICA A. CALELLA
ROCCO J. CARBONE, III
ASHLEY KOLATA-GUZIK
ELIZABETH L. LAURENZANO
KATHRYN ANNE WINTERLE
ASSISTANT COUNSEL

April 19, 2021

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

Re: **In the Matter of Leonard S. Singer**
Docket No. DRB 20-314
District Docket No. XIV-2019-0318E

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 granted the motion and determined to impose a censure for respondent's violations of RPC 1.15(b) (failing to safeguard client or third-party funds in the lawyer's possession), RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6), and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

This matter previously was before the Board as a 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)(1) (DRB 19-068).¹ On May 31, 2019, the Board denied that motion, determining that the facts set forth in the stipulation raised serious questions of potential knowing misappropriation of client funds or criminal theft of estate funds. Consequently, the Board remanded the matter to the OAE for further proceedings.

In the instant matter, the Board determined to grant the parties' renewed motion for discipline by consent. The stipulated facts clearly and convincingly establish that respondent violated RPC 1.15(b), RPC 1.15(d), and RPC 8.4(c). Moreover, the additional information and procedural history provided by the parties adequately answers the serious questions previously

¹ Although a prior, denied motion for discipline by consent typically would be treated as confidential, the parties waived such confidentiality by referring to that process in the instant stipulation of discipline by consent.

raised by the Board regarding potential knowing misappropriation and criminal theft. Specifically, in March 2018, in its proper exercise of authority and discretion, the OAE determined that, considering proof issues and disciplinary precedent, it could not prove knowing misappropriation in this case. Given the absence of that additional information from the prior record in this matter, the Board's 2019 remand was clearly warranted.

Specifically, respondent committed misconduct in connection with the administration of his father's estate. On August 4, 1994, respondent's father, Joseph Singer (Joseph), executed a Last Will and Testament (the Will). The Will named respondent as executor and provided for a \$250,000 cash bequest to him, with the remainder of the estate to be equally divided between him and his sister, Sandra Haber (Sandra).

On April 22, 2004, Joseph executed a durable power of attorney appointing respondent as his agent and attorney-in-fact for his accounts with Merrill Lynch (the Merrill POA). The Merrill POA supplemented a prior power of attorney, executed by Joseph in 1994 and, together, the instruments purportedly gave respondent "broad authority to use Joseph's assets," including to personally benefit respondent and his family. Specifically, part II, section (d) of the Merrill POA authorized respondent to "make transfers of gifts and money . . . from [Joseph's] accounts [with Merrill] to [respondent] . . . for [respondent's] health, education, support or maintenance."

On December 29, 2007, Joseph died. On February 15, 2008, the Will was admitted to probate in the Bergen County Surrogate's Court, and respondent was appointed as executor of Joseph's estate. As executor, respondent opened an estate account with Merrill Lynch (the Merrill Estate Account). On October 9, 2009, under penalty of perjury, respondent executed and filed a New Jersey Inheritance Tax Return in behalf of the estate (the Estate Tax Return), wherein he reported a gross estate value of \$1,787,395, comprising \$1,680,621 in investment bonds, \$106,274 in stocks, and \$500 in cash. In the Estate Tax Return, respondent set forth his and Sandra's equal interests in the estate. Despite Joseph's death, Merrill Lynch continued to honor the Merrill POA.

As the executor of Joseph's estate, respondent knew that, after necessary expenses and the \$250,000 cash bequest to respondent had been deducted, Joseph's estate was worth \$1,461,188.30. Pursuant to the Will, that amount was to be divided equally between respondent and Sandra. Accordingly, respondent was entitled to \$250,000 plus \$730,594.15, and Sandra was entitled to \$730,594.15. Subsequent to Joseph's death, however, respondent disbursed at least \$134,302.20 more of Joseph's estate funds to himself than he was entitled to receive, improperly reducing Sandra's share of the estate by that same amount.

Respondent admitted knowing that his improper expenditure of Joseph's estate's funds for his personal benefit, prior to the settlement of Joseph's estate, improperly reduced Sandra's share of the estate. Moreover, respondent admitted that, in his role as executor, when he calculated the final distributions to himself and to Sandra pursuant to the Will, he intentionally failed to account for the \$268,604.33 in estate funds that he had improperly disbursed to himself following Joseph's death. Respondent further admitted that he had neither consent nor authority from Sandra to disburse the \$268,604.33 in estate funds that he used for personal expenses unrelated to Joseph's estate; he additionally admitted that he never informed Sandra, prior to the final accounting and

settlement of Joseph's estate, that he had used those funds for his personal benefit.

Consequently, respondent disbursed to himself \$1,114,896.35 in estate assets, which, again, was \$134,302.20 more than he was entitled to receive, pursuant to the Will. Sandra, on the other hand, received only \$596,291.95 in estate distributions, which was \$134,302.20 less than she was entitled to receive.

As respondent conceded, his improper disbursement of Joseph's estate funds, for the benefit of himself and his family and to the detriment of Sandra, both reduced and delayed Sandra's lawful distribution, in violation of RPC 1.15(b). Moreover, by intentionally failing to account for the more than \$268,000 in estate funds that he had improperly disbursed to himself, and by repeatedly ignoring Sandra's requests for a cogent, supportable accounting of Joseph's estate funds, respondent also violated RPC 8.4(c).

On February 18, 2011, based on respondent's failure to explain estate accounting discrepancies, Sandra filed a lawsuit against him in the Superior Court of New Jersey, Chancery Division, Bergen County, seeking an order requiring him to "file and serve a sworn informal accounting detailing his acts" as the executor of Joseph's estate. On April 21, 2011, the trial judge assigned to the case issued an order requiring respondent to provide an informal accounting within forty-five days. After two extensions of time had been granted, respondent provided the informal accounting to Sandra, her attorney, and the court.

After reviewing the informal accounting, Sandra's attorney requested a court order directing respondent to file a formal accounting of Joseph's estate. Although that request was granted by the court, respondent failed to file the formal accounting as ordered, and, instead, requested a meeting with Sandra's attorneys "to discuss a possible settlement." Ultimately, in October 2011, a Stipulation of Dismissal Without Prejudice, General Release, and Settlement Agreement were executed by the parties, whereby respondent paid \$525,000 to Sandra, in satisfaction of her claims that he had "misappropriated" assets of the estate. In respect of the settlement, respondent made no admission of wrongdoing, and Sandra released all potential claims against respondent in connection with his administration of Joseph's estate. To satisfy the \$525,000 obligation to Sandra, respondent and his wife were required to obtain loans secured by mortgages on properties they owned, including their primary residence.

In 2013, despite the 2011 settlement of their dispute over respondent's administration of Joseph's estate, Sandra filed the underlying ethics grievance against respondent. In connection with its investigation of Sandra's claims, the OAE discovered that, in addition to the above-described misconduct, respondent also had failed to maintain his books and records in accordance with RPC 1.15(d) and R. 1:21-6. Specifically, respondent admitted that, from January 2009 through January 2019, he failed to maintain required attorney trust account receipts and disbursements journals. Respondent, thus, further violated RPC 1.15(d).

In mitigation, the stipulation cited the fact that respondent's law practice was dedicated to bankruptcy and, thus, he was inexperienced in estate administration; that the instant matter did not involve a client; and that respondent submitted multiple character letters.

In defense of his actions, respondent asserted that he had “operated with a belief that he was authorized to apply Joseph Singer’s assets in the manner that he did based on his incorrect understanding that [the Merrill POA and the 1994 POA] . . . remained in full force and effect after Joseph Singer’s death.” Those instruments provided that, contrary to law, they remained viable, even after Joseph’s death. In support of his defense, respondent provided the OAE with an expert opinion stating, in the expert’s view, that respondent’s conduct “was consistent with a common misunderstanding of how a durable power of attorney works,” and that “[r]outinely, people do not know that a power of attorney ceases to be effective upon death” of the grantor.

In aggravation, the parties cited respondent’s 1994 reprimand.

As mentioned above, the Board’s May 31, 2019 denial of the prior motion for discipline by consent stated that the facts set forth in the stipulation raised serious questions of potential knowing misappropriation of client funds or criminal theft of estate funds and remanded the matter to the OAE for further proceedings. In response, the parties have supplemented the record with the following information.

On March 2, 2018, before the special master who was then presiding over the pending hearing on this matter, the OAE moved to dismiss a charged allegation of knowing misappropriation, in violation of RPC 1.15(a), the principles of Wilson and Hollendonner, and RPC 8.4(c). The reasons for the OAE’s motion to dismiss that charge included 1) respondent’s recent provision, via discovery, of the 1994 POA, which, albeit contrary to the operation of applicable law, purported to remain in full force and effect following Joseph’s death; 2) the OAE’s determination and corresponding certification² that it could not prove the knowing misappropriation charge by clear and convincing evidence, due to respondent’s mistaken belief of law; Merrill’s Lynch’s continued acceptance of the Merrill POA; respondent’s lack of experience in estate matters; respondent’s expert report defending his actions as mistaken, versus purposeful; Sandra’s inability to testify due to suffering from Alzheimer’s disease; and the Court’s decision in In re Luciano, 227 N.J. 157 (2016) (which held that there was insufficient evidence to prove knowing misappropriation in connection with an attorney’s claimed \$100,000 gift from an elderly client and supported arguments that respondent would be making at a hearing in this matter).

The special master granted the OAE’s motion to dismiss the knowing misappropriation charges. Following that dismissal, the parties agreed to enter into the motion for discipline by consent and accompanying stipulation of fact.

Recordkeeping irregularities ordinarily are met with an admonition, as 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).

² The OAE’s determination was made with the consultation and concurrence of Assistant Ethics Counsel Timothy J. McNamara, First Assistant Ethics Counsel Jason Saunders, and Director Charles Centinaro.

In isolation, cases involving an attorney's failure to promptly deliver funds to clients or third persons, in violation of RPC 1.15(b), usually result in the imposition of an admonition or reprimand, depending on the circumstances. See, e.g., In the Matter of Jeffrey S. Lender, 11-368 (January 30, 2012) and In the Matter of Raymond Armour, DRB 11-451, DRB 11-452, and DRB 11-453 (March 19, 2012).

Attorneys found guilty of misrepresentations to third parties have generally received reprimands. See, e.g., In re Walcott, 217 N.J. 367 (2014) (attorney misrepresented to a third party, in writing, that he was holding \$2,000 in escrow from his client as collateral for a settlement agreement; violations of RPC 4.4(a)(1) and RPC 8.4(c)); In re Chatterjee, 217 N.J. 55 (2014) (attorney misrepresented to her employer, for five years, that she had taken steps to pass the Pennsylvania bar examination, a condition of her employment; compelling mitigation present); and In re Liptak, 217 N.J. 18 (2014) (attorney misrepresented to a mortgage broker the source of the funds she was holding in her trust account; attorney also committed recordkeeping violations; compelling mitigation present).

In mitigation, the Board considered that respondent's disciplinary history, in almost fifty years at the bar, is limited to his 1994 reprimand. Moreover, the instant matter did not involve a client and, presumably, the 2011 settlement in the amount of \$525,000, made Sandra whole. There was no additional aggravation to consider.

Accordingly, the Board determined that, considering the facts of this case, a censure is adequate discipline to protect the public and preserve confidence in the bar.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated November 5, 2020.
2. Stipulation of discipline by consent, dated November 4, 2020.
3. Affidavit of consent, dated September 29, 2020.
4. Ethics history, dated April 19, 2021.

Very truly yours,



Johanna Barba Jones
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)

Timothy J. McNamara, Assistant Ethics Counsel

Office of Attorney Ethics (e-mail)

K. Roger Plawker, Esq., Respondent's Counsel (e-mail and regular mail)

Justin P. Walder, Esq., Respondent's Counsel (e-mail and regular mail)

Sandra Haber, Grievant (regular mail)