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May 24, 2021

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

Re: **In the Matter of Miriam B. Weinstein**
Docket No. DRB 20-349
District Docket No. XIV-2017-0392E

Dear Ms. Baker:

The Disciplinary Review Board (the Board) has reviewed the motion for discipline by consent (censure or such lesser discipline as the Board deems warranted) filed by the Office of Attorney Ethics (the 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(a) (negligent misappropriation); RPC 1.15(b) (failure to promptly notify clients or third parties of receipts of funds in which they have an interest and to promptly disburse those funds); RPC 1.15(d) (failure to comply with the recordkeeping provisions of R. 1:21-6); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

On December 7, 2016 and January 24, 2017, the OAE conducted random compliance audits of respondent's attorney business and trust account records. The OAE discovered multiple recordkeeping deficiencies, as well as more significant misconduct. Specifically, in connection with her transactional real estate practice, respondent had failed to return funds owed to clients in seven real estate matters that occurred in September 2016. The funds for those seven real estate closings totaled \$1,217 and represented the difference between the estimated and actual costs of recording fees. Further investigation revealed that respondent

systematically had overcharged 531 of her clients and opposing parties for recording fees. Of those parties, 350 were also overcharged for mortgage release fees. Based on its analysis of respondent's records, the OAE discovered that respondent had overcharged her clients and opposing parties \$94,705, of which \$61,845 were recording fees and \$32,860 were mortgage release fees.

Respondent retained the difference between the estimated and actual fees as additional legal fees, which she failed to disclose on the HUD-1 settlement statements in the real estate transactions. Additionally, she signed the HUD-1 statements attesting to the truth and accuracy of the funds disbursed in accordance with the transaction. However, when respondent executed the HUD-1 statements, the recording fees listed were not accurate. Specifically, respondent did not disclose to the parties the difference between the estimated costs and actual expenses; respondent also did not disclose that the difference in those costs was to be retained by respondent as an additional legal fee. Thus, respondent made material misrepresentations to her clients, opposing parties, and third parties when she knowingly executed the HUD-1 statements containing inaccurate legal fee information.

By November 16, 2018, the date the OAE filed its formal ethics complaint, respondent had provided the OAE with documents demonstrating that, out of the \$94,705 of outstanding funds she owed to her clients and opposing parties, she had issued checks refunding a total of \$83,839 to the relevant parties. Ultimately, respondent was unable to refund the overcharges to twenty-four parties, either because the owner of the funds could not be located or the owner refused to accept the funds. Respondent prepared a list of the twenty-four items containing an explanation as to why the funds could not be returned. By October 1, 2020, respondent had provided to the OAE twenty-three affidavits and copies of twenty-three checks that she had deposited with the Superior Court Trust Fund Unit, representing the funds she had been unable to refund to the relevant parties.

Thus, respondent stipulated that her conduct violated RPC 1.15(a); RPC 1.15(b); RPC 1.15(d) and R. 1:21-6; and RPC 8.4(c).

Recently, the Court imposed censures in two ethics matters featuring similar misconduct. See In re Li, 239 N.J. 141 (2019) and In re Masessa, 239 N.J. 85 (2019).

In Li, from 2009 through 2016, in connection with his transactional real estate practice, the attorney collected inflated, "flat" recording fees from his clients and improperly retained the excess recording fees, in addition to his agreed fee listed on the settlement statement form. The attorney did not have his clients' authorization to retain the excess fees. During the relevant period, the attorney knowingly overcharged 738 clients for recording costs totaling \$119,660.

In all the transactions, the attorney knew that the final settlement statement was not an accurate account of the transaction and that the settlement funds were not disbursed in accordance with the final settlement statements. The attorney also charged other improper

fees to his clients, described in the settlement statements as “title binder review fees” of \$100 and “legal documentation and notary fees” of \$50. The attorney admitted that those costs, totaling \$66,450, were excessive and were included in the flat legal fee he had charged the clients for the transactions. Finally, the attorney admitted that he committed multiple recordkeeping violations.

In Masessa, from 2010 through 2017, the attorney engaged in the systematic practice of overcharging recording costs and retaining excess funds as the settlement agent in real estate closings, without client authorization. Over the seven-year period, the attorney’s misconduct affected hundreds of real estate clients. During the same time frame, he signed hundreds of settlement statements, confirming their accuracy. In all the transactions, the settlement statements were neither an accurate account of the transactions nor true reflections of the disbursement of settlement funds. The attorney, thus, admitted that he had systematically violated RPC 1.15(b) by retaining the inflated recording costs, instead of promptly notifying his clients or third parties of his receipt of funds to which they were entitled and by failing to promptly disburse those funds to them. He further admitted that, by executing the settlement statements in the transactions, he had engaged in a pattern of misrepresentation. The attorney overcharged and retained costs totaling \$76,254.

Although the Court imposed a censure on both Li and Masessa as a matter of stare decisis, it cautioned that, in the future, the purposeful, systematic, and unauthorized practice of retaining excess recording fees in real estate transactions would be met with more stringent discipline.

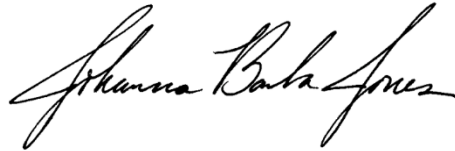
The Board determined that, because respondent’s conduct predated the Court’s Orders announcing the possibility of more stringent discipline and, indeed, occurred prior to and contemporaneous with the Court’s decision in In re Fortunato, 225 N.J. 3 (2016), discipline in excess of a censure is not authorized. Accordingly, the Board determined to impose a censure.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, undated.
2. Stipulation of discipline by consent, dated November 18, 2020.
3. Affidavit of consent, dated November 18, 2020.

4. Ethics history, dated May 24, 2021.

Very truly yours,

A handwritten signature in black ink, reading "Johanna Barba Jones". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Johanna Barba Jones
Chief Counsel

JBJ/akg
Enclosures

- c: (w/o enclosures)
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.), Chair
Disciplinary Review Board (e-mail)
Charles Centinaro, Director
Office of Attorney Ethics (e-mail and interoffice mail)
Timothy J. McNamara, Presenter
Office of Attorney Ethics (e-mail)
Shalom D. Stone, Respondent's Counsel (e-mail and regular mail)