DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

RICHARD J. HUGHES JUSTICE COMPLEX
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September 28, 2021

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

Re: **In the Matter of Angelo Bagnara**
Docket No. DRB 21-080
District Docket No. XIV-2019-0642E

Dear Ms. Baker:

The Disciplinary Review Board has reviewed the motion for discipline by consent (reprimand, censure, or such lesser discipline as the Board deems appropriate) filed by the Office of Attorney Ethics 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 violation of RPC 1.7(a)(2) (nineteen instances – concurrent conflict of interest), RPC 1.15(a) (nine instances – negligent misappropriation; one instance – commingling), and RPC 1.15(d) (one instance – failure to comply with the recordkeeping provisions of R. 1:21-6). The Board determined to dismiss the charges that respondent violated RPC 1.8(a) (nineteen instances – improper business transaction with a client).

Specifically, according to the stipulation, between January 1, 2019 and April 30, 2020, respondent was an employee of All-Pro Title Group (All-Pro) and steered nineteen of his clients to All-Pro for real estate closings, without obtaining their written, informed consent necessary to properly waive his conflict of interest, and without providing them the opportunity to employ an alternative title company. Respondent, thus, violated RPC 1.7(a) (nineteen instances).

Additionally, respondent failed to adhere to the recordkeeping requirements of R. 1:21-6, and his violations resulted in the negligent misappropriation of clients' entrusted funds.

Specifically, clients' funds were invaded due to respondent's commingling of personal funds in his attorney trust account (ATA), and his negligence in issuing a client's check from his ATA, after he mistakenly had deposited the funds in his attorney business account. However, the facts support a theory of negligent, as opposed to knowing, misappropriation, because there was no evidence in the record to suggest that respondent intended to invade his clients' funds. Rather, from the facts presented, respondent failed to adhere to the recordkeeping Rules, and promptly corrected his errors once he was made aware of them. There was no evidence that he utilized client funds for his own purposes. Nonetheless, respondent's negligent misappropriation, commingling, and failure to adhere to the R. 1:21-6 recordkeeping requirements resulted in his violation of RPC 1.15(a) (nine instances – negligent misappropriation; one instance – commingling) and RPC 1.15(d), respectively.

The Board, however, determined to dismiss the charges that respondent violated RPC 1.8(a) (nineteen instances), finding that, based on the evidence set forth in the record, respondent was merely a salaried employee of All-Pro. Specifically, the Board found that no evidence that respondent reaped any additional benefit from All-Pro for procuring title insurance clients beyond the goodwill typical of an employer-employee relationship. Therefore, the Board determined that respondent neither entered into a business transaction with his clients, nor acquired an ownership, possessory, security, or other pecuniary interest adverse to his clients. Compare In re Guidone, 139 N.J. 272 (1994) (three-month suspension for attorney who violated RPC 1.7, RPC 1.8(a), and RPC 8.4(c) by representing the seller of a tract of land without disclosing his interest in the partnership that purchased the land; the Court found that respondent "concealed his adverse and pecuniary interest for a long period of time"); In re Mott, 186 N.J. 367 (2006) (reprimand for attorney who violated RPC 1.7(b) and RPC 1.8(a) when he had an ownership interest in a title insurance company and prepared a contract for the sale of real estate on behalf of a prospective buyer at no charge in exchange for the use of his title insurance company in the real estate transaction; this quid pro quo was known as the "Ocean City practice"); and In re Poling, 184 N.J. 297 (2005) (reprimand for attorney who violated RPC 1.4(b), RPC 1.7(b), and RPC 1.8(a) for his "Ocean City practice" where he represented buyers in real estate transactions in which clients used his title company; the attorney stood to earn a fee through his wholly-owned title agency and, although he disclosed to his client his relationship to the title agency in some instances, he did not obtain written, informed consent from the clients).

It is well-settled that, absent egregious circumstances or serious economic injury, a reprimand is the appropriate discipline for a conflict of interest. In re Berkowitz, 136 N.J. 134, 148 (1994). See also In re Rajan, 237 N.J. 434 (2019) (the attorney engaged in a conflict of interest and an improper business transaction with a client by investing in a hotel development project spearheaded by an existing client; no prior discipline); In re Drachman, 239 N.J. 3 (2019) (the attorney engaged in a conflict of interest by recommending that eight of his clients use a title insurance company for their real estate transactions, without disclosing that he was a salaried employee of that company; there was no evidence of serious economic injury to the clients; the attorney also violated RPC 5.5(a)(1) by practicing law while ineligible to do so; no prior discipline); and In re Allegra, 229 N.J. 227 (2017) (the attorney engaged in a conflict of interest by engaging in a sexual relationship with an emotionally vulnerable client; the attorney also engaged in an improper business transaction with the same client by borrowing money from her;

respondent promptly repaid all the funds and had no prior discipline).

Likewise, reprimands are imposed for recordkeeping deficiencies that result in the negligent misappropriation of client funds. See, e.g., In re Mitnick, 231 N.J. 133 (2017) (as the result of poor recordkeeping practices, the attorney negligently misappropriated client funds held in his trust account; violations of RPC 1.15(a), and RPC 1.15(d); significant mitigation included the attorney's lack of prior discipline in a thirty-five-year legal career) and In re Rihacek, 230 N.J. 458 (2017) (attorney was guilty of negligent misappropriation of client funds held in his trust account, various recordkeeping violations, and charging mildly excessive fees in two matters; no prior discipline in thirty-five years).

In this case, respondent's conduct, and the resulting conflicts of interest, were nearly identical to the misconduct of the attorney in Drachman. Respondent failed to disclose his employment with the title company, failed to secure his clients' written consent to the disclosure, and failed to alert his clients that they could purchase title insurance elsewhere. In Drachman, the Board imposed a reprimand, despite the attorney's lack of prior discipline. Here, respondent not only engaged in a conflict of interest, he did so nineteen times, compared to the eight times addressed in Drachman, over the span of fifteen months.

Further, respondent's negligent misappropriation, resulting from his poor recordkeeping practices, aligns with the Board's prior decisions in Mitnick and Rihacek, cited above, where the attorneys had no prior discipline, decades-long careers, and recordkeeping violations that resulted in ATA errors. Again, the Board imposed reprimands in those matters. In the instant matter, respondent negligently invaded the funds of nine clients.

Considering the number of instances and client accounts affected by respondent's misconduct, in the aggregate, the Board determined that discipline in the range of a censure to a short-term suspension was appropriate.

The Board also considered aggravating and mitigating factors, and found none of the former. In mitigation, respondent enjoyed a twenty-year unblemished disciplinary history; cooperated with disciplinary authorities; consented to a stipulation; was contrite; caused no harm to clients; and corrected his errors. Thus, considering the totality of respondent's misconduct balanced against the mitigating factors, the Board determined that a censure was the quantum of discipline required to protect the public and preserve confidence in the bar.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated March 11, 2021.

2. Stipulation of discipline by consent, dated April 1, 2021.

3. Affidavit of consent, dated March 19, 2021.

4. Ethics history, dated September 28, 2021.

Very truly yours,

Johanna Barba Jones
Chief Counsel

JBJ/jm
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)
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