Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-168
District Docket No. XIV-2020-0292E

In the Matter of	:
Craig A. Fine	:
An Attorney at Law	:

Decision

Argued: October 21, 2021

Decided: January 4, 2022

Lauren Martinez appeared on behalf of the Office of Attorney Ethics.

Kim D. Ringler appeared on behalf of respondent.

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 (the OAE), pursuant to R. 1:20-14(a), following the Supreme Court of New York's order suspending respondent in that jurisdiction for three months, effective July 31, 2020.

The OAE asserted that respondent was found guilty of having violated the equivalents of New Jersey RPC 1.15(a) (negligent misappropriation – three instances; commingling – two instances), and RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6).

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

Respondent earned admission to the New Jersey and New York bars in 2006 and to the Florida bar in 2012. He has no prior discipline in New Jersey. During the relevant timeframe, respondent was a solo practitioner in Richmond County, New York – the Second Judicial District of New York.

On January 14, 2019, the Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts of New York (the Committee) filed a notice of petition and a six-count verified petition against respondent. On February 4, 2019, respondent filed an answer and admitted the charged violations, but maintained that both his misappropriation of client funds and commingling of personal and client funds were unintentional. Thereafter, on February 22, 2019, the Committee and respondent filed a joint stipulation of disputed and undisputed facts and, on August 13, 2019, a hearing was held.

Count One – Negligent Misappropriation of Client Funds (general shortfall)

Respondent maintained an attorney trust account (the ATA) at Capital One Bank, designated as "The Law Office of Craig A. Fine, P.C., IOLTA Attorney Trust Account." On August 15, 2016, respondent should have held $258,248.84 in his ATA as follows:

Client/Matter	Funds
414 Westervelt	$2,085
414/416 Jersey Street	$5,000
Black	$98
Domingo	$51.20
Farrell	$34.09
Gallagher	$14.83
Grand Oaks	$3,600
Kazdan	$2,500
Leunes	$190,611.13
Mila	$14,621.79
Muja	$2,192.50
Poplar	$27,000
Sabler	$183
Victory Blvd.	$58
Volpe	$199.30
Yorker NY Realty	$10,000

[Ex.5,¶3.][1]

[1] "Ex." refers to the exhibits attached to the OAE's July 20, 2021 brief in support of the motion for reciprocal discipline.

However, at that time, respondent's ATA balance was only $240,282.87, constituting a $17,965.97 shortfall. Therefore, respondent misappropriated client funds entrusted to him, in violation of New York Rule of Professional Conduct 1.15(a).[2]

Count Two – Negligent Misappropriation of Client Funds (Musnicki)

Respondent represented Plaza Home Mortgage, the lender, in a mortgage refinance transaction for Anthony and Christine Musnicki. On August 17, 2016, respondent issued an ATA check to himself, in the amount of $1,200, which represented his fee in the matter. However, when the check cleared, there were no funds in the ATA for the Musnicki matter and, therefore, the disbursement resulted in the invasion of other clients' funds. Thus, respondent again misappropriated client funds entrusted to him, in violation of New York Rule of Professional Conduct 1.15(a).

Count Three – Negligent Misappropriation of Client Funds (Geraldi)

Respondent represented Alex Kazdan, the lender, in a mortgage payoff for property owned by Vincent and Georgianne Geraldi. On January 17, 2017, $227,100 was deposited in respondent's ATA on behalf of the Geraldis and,

[2] New York Rule of Professional Conduct 1.15(a) provides: "A lawyer in possession of any funds or other property belonging to another person, where such possession is incident to his or her practice of law, is a fiduciary, and must not misappropriate such funds or property or commingle such funds or property with his or her own."

thereafter, respondent issued a $227,100 ATA check to Kazdan. Consequently, the next day, when respondent issued a $1,000 ATA check to himself, which represented his fee in the matter, there were no funds in the ATA for the Geraldi matter. Therefore, when the check cleared it resulted in the invasion of other clients' funds. Thus, for the third time, respondent misappropriated client funds entrusted to him, in violation of New York Rule of Professional Conduct 1.15(a).

Count Four – Commingling (Kazdan)

As detailed above, respondent represented Alex Kazdan, the lender, in a mortgage payoff for property owned by the Geraldis. On May 31, 2016, respondent deposited $252,000 in his ATA on behalf of Kazdan and, on June 16, 2016, he deposited an additional $233,000 in his ATA on behalf of Kazdan. On June 20, 2016, after he had disbursed all funds related to Kazdan, respondent's $2,500 fee remained in his ATA, where it stayed until October 14, 2016. Respondent's failure to promptly withdraw his fee from his ATA resulted in personal and client funds being commingled in his ATA, in violation of New York Rule of Professional Conduct 1.15(a).

Count Five – Commingling (New Jersey Properties)

Respondent and his business partner invested in two properties in New Jersey. Respondent deposited in his ATA funds belonging to him and his business partner and relating to the New Jersey properties as follows:

Amount	Date of Deposit
$12,600	10/24/2016
$12,746.56	11/14/2016
$14,857.66	12/22/2016
$13,625	12/22/2016
$50,000	1/13/2017

[Ex.5,¶32.]

On the dates these five deposits were made, respondent's ATA also held client funds. Consequently, for the second time, respondent commingled personal and client funds in his ATA, in violation of New York Rule of Professional Conduct 1.15(a).

Count Six – Recordkeeping

In connection with his practice of law, respondent maintained an ATA. In his ATA, he held client funds, escrow funds, and personal funds related to investment properties in New Jersey. Respondent also paid expenses related to the New Jersey properties from the account. Therefore, respondent violated New

York Rule of Professional Conduct 1.15(b)(1), which required him to maintain separate accounts.[3]

Respondent admitted all the charged violations but maintained that his misappropriation of client funds (counts one, two, and three) and his commingling of personal and client funds (count four) was unintentional.

The New York Discipline

On August 13, 2019, a hearing was held before a Special Referee. Respondent testified, admitted the charged violations, and took "full responsibility" for his misconduct. He maintained, however, that his misappropriation of client funds was unintentional.

[3] New York Rule of Professional Conduct 1.15(b)(1) provides: "A lawyer who is in possession of funds belonging to another person incident to the lawyer's practice of law shall maintain such funds in a banking institution within New York State that agrees to provide dishonored check reports in accordance with the provisions of 22 N.Y.C.R.R. Part 1300. 'Banking Institution' means a state or national bank, trust company, savings bank, savings and loan association or credit union. Such funds shall be maintained, in the lawyer's own name, or in the name of a firm of lawyers of which the lawyer is a member, or in the name of the lawyer or firm of lawyers by whom the lawyer is employed, in a special account or accounts, separate from any business or personal accounts of the lawyer or lawyer's firm, and separate from any accounts that the lawyer may maintain as executor, guardian, trustee, or receiver, or in any other fiduciary capacity; into such special account or accounts all funds held in escrow or otherwise entrusted to the lawyer or firm shall be deposited; provided, however, that such funds may be maintained in a banking institution located outside New York State if such banking institution complies with 22 N.Y.C.R.R. Part 1300 and the lawyer has obtained the prior written approval of the person to whom such funds belong specifying the name and address of the office or branch of the banking institution where such funds are to be maintained."

Regarding count one, respondent testified that he did not use client ledgers and that the shortfall in the ATA was the result of poor recordkeeping. Regarding counts two and three, respondent admitted to the $1,200 withdrawal in the Musnicki matter and the $1,000 withdrawal in the Geraldi matter, and further conceded that there were insufficient funds in his ATA to cover the withdrawals, which resulted in the invasion of other clients' funds. Respondent explained that he "accidentally [. . .] cashed [the Musnicki check] prematurely." He further explained that he mistakenly wrote a check to Geraldi which included his $1,000 fee and, thereafter, issued himself a check for his fee without realizing that there were no corresponding funds in the account. A few months later, respondent realized his error and replenished the $1,000 associated with the Geraldi matter.

Respondent also took responsibility for the improperly commingled funds but maintained that his misconduct was unintentional. Respondent explained that, regarding the Kazdan matter, he issued a check for his $2,500 fee, but that he must have lost the check because it was not deposited. He testified that, four months later, when he realized that the $2,500 fee was not deposited, he reissued the check to himself and withdrew his funds from the account.

Regarding counts five and six, respondent testified that he and another individual bought and owned two New Jersey properties, and that he had

previously represented the entity that sold them the properties. Based on his prior representation of the entity that owned the properties, respondent mistakenly believed that he could maintain funds related to the properties in his ATA. He testified that the personal funds, which consisted of five deposits, were in his ATA for three to four months. Respondent testified that he now understood his obligation to maintain separate accounts, and that he had opened a separate account for that purpose.

Regarding mitigation, respondent submitted over fifty character references for the Referee's consideration. By way of example, Michael Coleman, who previously was employed in the mortgage industry and worked closely with respondent, stated that he has relied on respondent for legal advice for the last two decades and described respondent as a "dedicated and consummate professional." Vincent Sciulla, Director of Societe Generale Bank Jersey City, New Jersey also described respondent as having provided "reliable, well-reasoned advice." Additionally, at the disciplinary hearing, three individuals testified to respondent's good character. Eric Puma, Esq., Anthony DiMauro, Esq., and Rosalie Ferraro, respondent's real estate business assistant, described respondent as honest and trustworthy.

The Special Referee's November 10, 2019 report sustained all six charged violations against respondent. In mitigation, the Special Referee noted that

respondent took full responsibility for his misconduct and took steps to bring his recordkeeping into compliance. Specifically, with the assistance of counsel, respondent conducted a complete audit of his ATA and reported the findings to the Committee, began using Quickbooks to maintain ATA client ledgers, and had become "obsessive" in his performance of monthly, three-way reconciliations. Respondent also cooperated with the disciplinary authorities, and no clients were harmed by his misconduct. Respondent expressed remorse, stating that he was "embarrassed and ashamed."

Respondent moved to confirm the Special Referee's report and argued that a censure was the appropriate quantum of discipline because his misconduct was unintentional. Respondent stated that he was "overwhelmed by his growing law practice, [and] did not commit sufficient time or attention to ensuring that he was complying with the Rules governing attorney [financial] accounts."

The Supreme Court of New York confirmed the Special Referee's report. It considered, in mitigation, that respondent cooperated with the disciplinary authorities; expressed remorse; accepted responsibility for his misconduct, which was unintentional; promptly took efforts to rectify his misconduct and instituted remedial recordkeeping measures; had a good reputation, as evidenced by more than fifty character reference letters; engaged in volunteer activities; and had an unblemished disciplinary history. The Supreme Court of New York

suspended respondent's license to practice law for three months, effective July 31, 2020.

On July 24, 2020, respondent, through counsel, reported his New York discipline to the OAE, as R. 1:20-14(a)(1) requires. Consequently, on August 12, 2020, the OAE docketed the matter. On February 10, 2021, respondent was reinstated to the practice of law in New York, and, on July 26, 2021, the OAE filed a motion for reciprocal discipline accompanied by a brief in support thereof.

In its submission to us, the OAE argued that respondent violated the equivalents of New Jersey RPC 1.15(a) and RPC 1.15(d) and urged the imposition of a three-month suspension.

Respondent, through counsel, joined the OAE's recommendation that he be subjected to a three-month suspension. He argued that the extensive mitigation presented at the New York disciplinary hearing should be provided equal weight and consideration in New Jersey.

Additionally, respondent certified that, from the effective date of his three-month suspension in New York until he was reinstated – July 2020 through February 2021 – he voluntarily ceased practicing law in New Jersey and Florida. He reflected that "[t]he months during which [he] did not practice law were impactful on [him] in many ways and solidified the importance of making sure

that [he] educate [him]self about [his] ethics responsibilities and comply with applicable rules." Indeed, in New York, respondent actually served a six-month suspension or, stated differently, a suspension double that which was imposed.[4] Based thereon, respondent requested that his New Jersey suspension be retroactive. Respondent also certified that, on December 10, 2020, he received a three-month, retroactive suspension in Florida.

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, the standard of proof in disciplinary proceedings is a fair preponderance of the evidence. In re Capoccia, 453 N.E.2d 497, 498 (N.Y. 1983). Notably, here, respondent stipulated to the facts and admitted to the charged violations of the New York Rules of Professional Conduct.

[4] Respondent's counsel noted that the delayed reinstatement was due to administrative delays caused by the COVID-19 pandemic.

It also bears mention that the OAE reviewed the proofs in the instant matter and determined that it could not establish a knowing misappropriation under New Jersey precedent and the New Jersey standard of proof – clear and convincing evidence. Therefore, the OAE charged respondent's misappropriation, in violation of RPC 1.15(a), as negligent misappropriation.

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:
>
> (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;
>
> (D) the procedure followed 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. As detailed below, considering the

facts of this matter, a three-month suspension – the quantum of discipline urged by the OAE and respondent in their pleadings and during oral argument – is not supported by precedent.

As the Supreme Court of New York found, and as he admitted, respondent violated RPC 1.15(d) by failing to maintain client ledger cards or to perform monthly three-way reconciliations of his ATA. Respondent also admitted that his recordkeeping deficiencies led to his failure to safeguard funds and his negligent invasion of client funds, and that he further commingled personal and client funds, in violation of RPC 1.15(a). Specifically, he admitted that there was a $17,965.97 shortfall in his ATA, and that there were insufficient funds in his ATA to cover the withdrawals in the Musnicki and Geraldi matters, which resulted in the negligent invasion of other clients' funds. Respondent also commingled funds in his ATA, related to the Kazdan and New Jersey properties matters, claiming ignorance if his fiduciary obligations pursuant to the recordkeeping Rules.

In sum, we determine to grant the motion for reciprocal discipline and find that respondent violated RPC 1.15(a) (five instances) and RPC 1.15(d). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Standing alone, commingling ordinarily will be met with an admonition. See, e.g., In the Matter of Richard P. Rinaldo, DRB 18-189 (October 1, 2018) (commingling of personal loan proceeds in the attorney trust account, in violation of RPC 1.15(a); recordkeeping violations also found; the commingling did not impact client funds in the trust account); In the Matter of Richard Mario DeLuca, DRB 14-402 (March 9, 2015) (the attorney had a trust account shortage of $1,801.67; because the attorney maintained more than $10,000 of earned legal fees in his trust account, no client or escrow funds were invaded; the attorney was guilty of commingling personal and trust funds and failing to comply with recordkeeping requirements); and In the Matter of Dan A. Druz, DRB 10-404 (March 3, 2011) (an OAE audit revealed that, during a two-year period, the attorney had commingled personal and client funds in his trust account, in violation of RPC 1.15(a), by routinely using the account for business and personal transactions; recordkeeping deficiencies also found, violations of RPC 1.15(d) and R. 1:21-6).

Generally, a reprimand is the appropriate discipline for recordkeeping violations that cause the negligent misappropriation of, and constitute failure to safeguard, client funds. See, e.g., In re Osterbye, 243 N.J. 340 (2020) (attorney reprimanded when his poor recordkeeping practices caused a negligent invasion of, and failure to safeguard, funds owed to clients and others as a result of real

estate transactions; his inability to conform his recordkeeping practices despite multiple opportunities to do so also violated RPC 8.1(b) (failure to cooperate with disciplinary authorities)); In re Mitnick, 231 N.J. 133 (2017) (attorney reprimanded for violations of RPC 1.15(a) and (d); as the result of poor recordkeeping practices, the attorney negligently misappropriated more than $40,000 in client funds held in his trust account; the attorney had an unblemished disciplinary record in a thirty-five-year legal career); and In re Rihacek, 230 N.J. 458 (2017) (attorney reprimanded for negligent misappropriation of client funds held in the trust account, various recordkeeping violations, and charging mildly excessive fees in two matters; no prior discipline in thirty-five years).

Like the attorney in Mitnick, who was reprimanded, respondent negligently misappropriated a significant sum of client funds – approximately $20,000 – from his ATA. Moreover, respondent commingled in his ATA both a fee and personal funds earmarked for a business venture. The combination of respondent's misconduct could justify a censure. In crafting the appropriate discipline, however, we also consider aggravating and mitigating factors.

There is no aggravation to consider.

In mitigation, respondent expressed remorse; accepted responsibility for his misconduct; promptly took efforts to rectify his misconduct; instituted remedial recordkeeping measures; submitted more than fifty character

references; produced the testimony of three character witnesses at the disciplinary hearing in New York; recounted his volunteer activities; and has an unblemished fifteen-year disciplinary history in New Jersey.

In further mitigation, respondent has served his three-month suspension in New York, has been reinstated to the practice of law in New York, and is in good standing.

On balance, we determine that the mitigating factors support the imposition of a reprimand.

Chair Gallipoli voted to impose a censure.

Following his New York discipline, respondent has demonstrated commitment to his ethics responsibilities, as evidenced by his remedial measures and lack of further recordkeeping violations. We, thus, determine that respondent poses no current danger to the public and impose no recordkeeping conditions.

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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
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 Craig A. Fine
Docket No. DRB 21-168

Argued: October 21, 2021

Decided: January 4, 2022

Disposition: Reprimand

Members	Reprimand	Censure
Gallipoli		X
Singer	X	
Boyer	X	
Campelo	X	
Hoberman	X	
Joseph	X	
Menaker	X	
Petrou	X	
Rivera	X	
Total:	8	1

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