

**OFFICE OF ATTORNEY ETHICS
SUPREME COURT OF NEW JERSEY
P.O. Box 963
Trenton, New Jersey 08625
Trial Counsel: Missy Urban, Esq.
609-530-4282**

**SUPREME COURT OF NEW JERSEY
OFFICE OF ATTORNEY ETHICS
Docket No. XIV-2013-0118E**

**OFFICE OF ATTORNEY ETHICS,
Complainant**

v.

**FRANK CATANIA, JR., ESQ.,
Respondent.**

**COMPLAINT
Misconduct (Complex)
R. 1:20-4(b)**

Complainant, Office of Attorney Ethics (“OAE”) of the Supreme Court of New Jersey, Mountainview Office Complex, 840 Bear Tavern Road, P.O. Box 963, Trenton, New Jersey 08625, by way of complaint against Respondent, says:

GENERAL ALLEGATIONS

1. The respondent, Frank Catania, Jr., was admitted to practice law in the State of New Jersey in 1991.
2. At the time of the events forming the basis for this complaint, respondent’s law office was located at 909 Belmont Avenue, North Haledon, New Jersey 07508.
3. At all relevant times herein, respondent maintained the following bank accounts in connection with his practice of law:

Atlantic Stewardship Bank - Attorney Trust Account (“ATA”) #XXX1111

Atlantic Stewardship Bank - Attorney Business Account #XXX1081

Valley National Bank – IOLTA Attorney Trust Account #XXXX8344

Valley National Bank - Attorney Business Account #XXXX8980

4. The following accounts were closed in January 2010:

Valley National Bank – IOLTA Attorney Trust Account #XXXX8344

Valley National Bank - Attorney Business Account #XXXX8980

COUNT ONE

*Knowing Misappropriation of Client Funds; Dishonesty; Failure to Safeguard Client Funds;
and Failure to Make Prompt Disposition of Client Funds*

- I-1. The General Allegations are repeated as if set forth herein.
- I-2. Respondent was retained to represent Charles C., Andrea and Patricia Amorosi (“Amorosi”).
- I-3. Respondent was retained to represent Amorosi in the purchase of a property at 3441 Bergen Avenue, Toms River, New Jersey (“Bergen Avenue”) from Louis Romei for the Estate of Mary Romei (“Romei”).
- I-4. Respondent did not provide a copy of a retainer agreement to the OAE regarding the Amorosi matter.
- I-5. Romei was represented by Howard Butensky, Esq. (“Butensky”).
- I-6. Respondent was the settlement agent in the Amorosi/Romei real estate transaction. **(Exhibit 1)**.
- I-7. Bergen Avenue is a water front property located on a lagoon.
- I-8. Butensky sought a riparian grant from the State of New Jersey. **(Exhibit 2)**.
- I-9. On August 28, 2009, a representative from the State of New Jersey Bureau of Tidelands Management wrote to Butensky advising that on June 3, 2009 the Tidelands Resource Council voted to issue a riparian grant for consideration in the amount of \$183,191.00 plus a processing fee of \$700.00 **(Exhibit 3)**.
- I-10. Butensky paid the \$700.00 processing fee on September 1, 2009. **(Exhibit 4)**.
- I-11. A Contract of Sale was executed on September 12, 2009, between Amorosi and Romei for Bergen Avenue. **(Exhibit 5)**.
- I-12. In September 2009, respondent contacted Carroll Title Agency, Inc. (“CTA”) to obtain title insurance for Amorosi.
- I-13. On November 6, 2009, CTA wrote to respondent enclosing the following: an executed title insurance commitment, Policy No. CTA-09-45235; a closing service letter; Notice of Settlement forms, and a billing invoice in the amount of \$1,932.25. **(Exhibit 6)**.

I-14. On November 12, 2009, CTA wrote to respondent enclosing an endorsement attached to Policy No. CTA-09-45235, which stated,

“Riparian Grant Requirement may be omitted at closing provided an escrow is held in the amount of \$190,000.00 pending payment to the State of New Jersey. Note: Escrow funds can be used to make payment.”

(Exhibit 7).

I-15. Respondent knew CTA required \$190,000.00 to be held in escrow for the riparian grant.

I-16. Respondent held the closing for the Bergen Avenue real estate transaction on January 25, 2010. **(See Exhibit 1).**

I-17. Respondent received \$287,212.83 on January 25, 2010 in his ATA #XXX1111 via a wire transfer from Wells Fargo Bank on behalf of Charles Amorosi. **(Exhibits 8 & 9).**

I-18. Respondent credited the Amorosi client ledger card (No. 4-3687) for \$287,212.83 on January 25, 2010. **(Exhibit 10).**

I-19. After distributions, between January 27, 2010 and February 25, 2010, relating to the real estate transaction, \$190,000.00 remained in the ATA #XXX1111 for the Amorosi/Romei matter. **(Exhibit 11).**

I-20. On December 21, 2010 respondent issued check #1121 from ATA #XXX1111 to his business, Cattino Fitness Corp., in the amount of \$15,000.00. The check is memorialized for “amorosi/romei contribution.” **(Exhibit 12).** Cattino Fitness is unrelated to the Amorosi/Romei transaction.

I-21. Check #1121 was for respondent’s personal business expenses but respondent entered the debit on the Amorosi client ledger card (No. 4-3687) as a deduction from the Amorosi escrow in the amount of \$15,000 leaving a balance of \$175,000 for Amorosi on December 22, 2010. **(See Exhibits 10 & 11).**

I-22. Check #1121 cleared ATA #XXX1111 on December 22, 2010, leaving a balance of \$222,597.18. **(Exhibit 13).**

I-23. Respondent, however, on December 22, 2010, should have been holding, at a minimum, the following in his trust account for the following clients **(see Exhibit 10):**

<u>Name/Client#</u>	<u>Amount</u>
Gassib/2-1179	\$4,583.33
Amorosi/4-3687	\$190,000.00
Zizzo/4-3713	\$30,301.32
Zaturoski/4-3714	\$10,113.00
Sanford	\$2,500.00
TOTAL	<u>\$237,497.65</u>

- I-24. On December 22, 2010, respondent's ATA #XXX1111 had a shortage of \$14,900.47.¹
- I-25. On December 30, 2010, respondent issued trust check #1130 from ATA #XXX1111 to Greenbaum, Rowe, Smith & Davis in the amount of \$10,000.00. The check is memorialized with the notation "legal fees." (**Exhibit 14**). The legal fees were unrelated to the Amorosi/Romei transaction.
- I-26. Check #1130 was for legal fees owed to Greenbaum, Rowe, Smith and Davis related to respondent's personal businesses. Respondent, however, entered the fee on the Amorosi client ledger card as a deduction from the Amorosi escrow. (**See Exhibit 10**).
- I-27. Check #1130 cleared respondent's trust account on January 4, 2011, leaving a balance of \$184,010.36 in the entire trust account. (**Exhibit 15**).
- I-28. Respondent, however, on January 4, 2011, should have been holding, at a minimum, the following in his trust account for his clients (**see Exhibit 10**):

<u>Client #/Name</u>	<u>Amount</u>
Gassib/2-1179	\$4,583.33
Amorosi/4-3687	\$190,000.00
Zizzo/4-3713	\$1,714.50
Zaturoski/4-3714	\$10,113.00
Sanford	\$2,500.00
TOTAL	<u>\$208,910.83</u>

- I-29. On January 4, 2011, respondent's ATA #XXX1111 had a shortage of \$24,900.47.²
- I-30. According to respondent's own records, as of January 4, 2011, the \$190,000.00 riparian escrow was reduced to \$165,000.00 by the two misappropriations reflecting a shortage of \$25,000.00.³ (**See Exhibits 10 & 11**).
- I-31. On March 2, 2011, respondent issued check #1144 from ATA #XXX1111 to Atlantic Stewardship Bank in the amount of \$183,191.00. The check is memorialized with the notation "amorosi/romei Tidelands Grant." (**Exhibit 16**).
- I-32. The funds from check #1144 were used to purchase Atlantic Stewardship Bank official check #1006362 payable to Treasurer State of New Jersey in the amount of \$183,191.00. (**Exhibit 17**).
- I-33. Atlantic Stewardship Bank official check #1006362 was for payment to the State of New Jersey for the riparian grant.
- I-34. Check #1144 cleared ATA #XXX1111 on March 2, 2011, leaving a balance of \$16,441.86. (**Exhibit 18**).

¹ Respondent's ATA# XXX1111 has a discrepancy of \$99.53 throughout the relevant time period set forth in this complaint.

² See footnote 1.

³ See footnote 1.

I-35. As of March 31, 2011, respondent's ATA #XXX1111 had a balance of \$6,441.86 but respondent should have been holding, at a minimum, the following:

<u>Client #/Name</u>	<u>Amount</u>
Gassib/2-1179	\$4,583.33
Amorosi/4-3687	\$6,809.00
Zizzo/4-3713	\$250.00
Zaturoski/4-3714	\$200.00
Michalski/4-3718	\$19,500.00
TOTAL	<u>\$31,342.33</u>

I-36. On March 31, 2011, respondent's ATA #1111 had a shortage of \$24,900.47.⁴

I-37. Respondent was aware of the approximate \$25,000.00 shortage because on April 26, 2011 he deposited \$15,000 to his ATA to partially replenish the shortage. (Exhibit 19).

I-38. Respondent posted the \$15,000 deposit to the Amorosi client ledger card #4-3687. Respondent, however, used those funds to satisfy the Michalski matter. (See Exhibit 10).

I-39. As of April 26, 2011, respondent's ATA #XXX1111 balance was \$22,277.86. (See Exhibit 19).

I-40. As of April 26, 2011, respondent should have been holding, at a minimum, the following:

<u>Client #/Name</u>	<u>Amount</u>
Gassib/2-1179	\$4,583.33
Amorosi/4-3687	\$6,809.00
Zizzo/4-3713	\$250.00
Michalski/4-3718	\$20,536.00
TOTAL	<u>\$32,178.33</u>

I-41. On March 31, 2011, respondent's ATA #1111 had a shortage of \$9,900.47.⁵

I-42. On May 2, 2011, respondent issued ATA #XXX1111 check #1149 to Danielle Michalski in the amount of \$18,500.00. The check is memorialized with the notation "Michalski/Patel release of deposit." (Exhibit 20).

I-43. On May 4, 2011, check #1149 cleared respondent's ATA #XXX1111 leaving a balance of \$2,777.86. (Exhibit 21).

I-44. Prior to respondent's \$15,000.00 deposit of personal funds on April 26, 2011, the ATA balance was \$7,277.86 and would not have had sufficient funds to cover the Michalski distributions on May 2, and May 4, 2011. (See Exhibit 19).

I-45. On August 2, 2011, respondent wrote to Butensky advising that at the January 26, 2010 closing, an escrow, in the amount of \$190,000.00, was held with respect to the riparian

⁴ See footnote 1.

⁵ See footnote 1.

- grant. The amount of \$183,191.00 had been paid to the State of New Jersey and a balance of \$6,809.00 remained. **(Exhibit 22)**.
- I-46. Within the August 2, 2011 letter respondent enclosed ATA #XXX1111 check #1178 payable to Butensky in the amount of \$6,809.00. The check is memorialized with the notation "amorosi/romei release of balance of escrow."
- I-47. Check #1178 cleared respondent's trust account on August 17, 2011. **(Exhibit 23)**.
- I-48. On August 4, 2011, CTA wrote to respondent authorizing him to release the \$190,000.00 being held in escrow. **(Exhibit 24)**.
- I-49. According to the August 4, 2011 letter from CTA respondent was not authorized to release the escrow funds until August 4, 2011.
- I-50. As of August 17, 2011 respondent had a client balance of <\$10,000.00> on the Amorosi client ledger card. **(See Exhibit 11)**.
- I-51. By letter dated July 5, 2012, respondent explained that the \$10,000.00 shortage was a "[deficit] relative to [respondent's] file #4-3687, which was for the purchase of residential real estate and resulted from a mistake made in advising the client the total amount of funds needed for the closing." **(Exhibit 25)**.
- I-52. On September 7, 2012, respondent partially replenished the \$10,000.00 shortage with his attorney business account check #1760 in the amount of \$5,000.00 payable to his attorney trust account. Check #1760 is memorialized with the notation "4-3687" (Amorosi matter). **(Exhibits 11 & 26)**.
- I-53. The September 7, 2012 deposit cleared respondent's ATA #XXX1111 on September 10, 2012. **(Exhibit 27)**.
- I-54. On September 14, 2012, respondent replenished the balance of the \$10,000.00 shortage by depositing cash in the amount of \$5,000.00 to his attorney trust account. **(See Exhibits 11 & 27)**.
- I-55. In further correspondence with the OAE, on May 24, 2013, respondent explained that the shortage in the Amorosi account was due to two separate loans where Amorosi had authorized him to borrow \$15,000.00 and \$10,000.00. This explanation was clearly contrary to respondent's prior explanation that the client had agreed to pay back the \$10,000.00 deficiency. **(Exhibits 25 & 28)**.
- I-56. On June 11, 2013, respondent produced copies of two hand-written notes purportedly from Amorosi dated December 21 and 28, 2011 allegedly authorizing respondent to borrow \$15,000.00 and \$10,000.00 respectively. **(Exhibit 29)**.
- I-57. By letter dated September 10, 2013, the OAE asked respondent for an explanation as to the discrepancy in explanation in the July 5, 2012 letter and respondent's May 24, 2013 letter. **(Exhibit 30)**.

- I-58. Although respondent clearly received the OAE's September 10, 2013 letter, to date, respondent has failed to respond to the OAE's request. (See Exhibit 30).
- I-59. The State of New Jersey, Romei and/or Butensky never authorized respondent to borrow the \$190,000.00 of riparian escrow funds.
- I-60. During the period of January 25, 2010, through September 14, 2012, Respondent did not hold inviolate \$190,000.00 for the Amorosi/Romei matter, as well as the funds being held for Gassib, Zizzo, Zaturski, Sanford and Michalski. Instead Respondent used the funds for personal use without the authority of all parties.
- I-61. Respondent invaded and knowingly misappropriated funds belonging to various clients aforesaid.
- I-62. In so doing, respondent violated the Rules of Professional Conduct as follows:
- (a) RPC 1.15(a), RPC 8.4(c) and the principles of In re Wilson, 81 N.J. 451 (1979) and In re Hollendonner, 102 N.J. 21 (1985) – in that he knowingly misappropriated client funds;
 - (b) RPC 1.15(a) – in that he failed to safeguard client funds; and
 - (c) RPC 1.15(b) – in that upon receiving funds or other property in which a client or third person had an interest, he failed to promptly deliver to the client or third person any funds or other property that the client or third person was entitled to receive.

WHEREFORE, respondent should be disciplined.

DATE:

February 18, 2014

OFFICE OF ATTORNEY ETHICS

By:

Charles Centinaro
Charles Centinaro, Director

Office of Attorney Ethics v. Frank Catania, Jr., Esq.
Docket No. XIV-2013-0118E
Complaint Exhibit List

- Exhibit 1** HUD-1 Uniform Settlement Statement dated January 25, 2010 for property 3441 Bergen Avenue, Toms River, New Jersey.
- Exhibit 2** September 21, 2009 letter from Howard Butensky, Esq. to Michael P. DeMarco, Esq. and Joseph Slawinski, Esq.
- Exhibit 3** August 28, 2009 letter from Kenneth Ratzman, Acting Manager, Bureau of Tidelands Management to Howard Butensky.
- Exhibit 4** September 1, 2009 letter from Howard Butensky, Esq. to Kenneth Ratzman, Acting Manager, Bureau of Tidelands Management.
- Exhibit 5** Contract of Sale executed on September 12, 2009 between Amorosi and Romei for 3441 Bergen Avenue, Toms River, New Jersey.
- Exhibit 6** November 6, 2009 letter from Nicole M. Cuttitta, Carroll Title Agency, Inc. to Frank Catania, Jr., Esq. enclosing an executed title insurance commitment, Policy No. CTA-09-45235; a closing service letter; a Notice of Settlement forms, and a billing invoice in the amount of \$1,932.25.
- Exhibit 7** November 12, 2009 letter from Nicole M. Cuttitta, Carroll Title Agency, Inc. to Frank Catania, Jr., Esq. enclosing the endorsement to the title commitment regarding 3441 Bergen Avenue, Toms River, New Jersey.
- Exhibit 8** Atlantic Stewardship Bank Account No. xxx1111 bank statement for period January 1, 2010 thru January 31, 2010.
- Exhibit 9** January 25, 2010 Atlantic Stewardship Bank Account No. xxx1111 wire transfer in the amount of \$287,212.83.
- Exhibit 10** Respondent's Register Report for 11/1/2009 through 4/30/2011 (including client ledger card for Amorosi/Romei 4-3687).
- Exhibit 11** Client Ledger prepared by OAE for Amorosi/Romei 4-3687.
- Exhibit 12** Attorney Trust Account No. xxx1111 check no. 1121 dated December 21, 2010 payable to Cattino Fitness Corp. in the amount of \$15,000.00.
- Exhibit 13** Atlantic Stewardship Bank Account No. xxx1111 bank statement for period December 1, 2010 thru January 2, 2011.
- Exhibit 14** Attorney Trust Account No. xxx1111 check no. 1130 dated December 30, 2010 payable to Greenbaum, Rowe, Smith & Davis in the amount of \$10,000.00.

- Exhibit 15** Atlantic Stewardship Bank Account No. xxx1111 bank statement for period January 1, 2011 thru January 31, 2011.
- Exhibit 16** Attorney Trust Account No. xxx1111 check no. 1144 dated March 2, 2011 payable to Atlantic Stewardship Bank in the amount of \$183,191.00.
- Exhibit 17** Atlantic Stewardship Bank Official Check no. 1006362 dated March 2, 2011 payable to IOLTA/Catania & Ehrlich in the amount of \$183,191.00.
- Exhibit 18** Atlantic Stewardship Bank Account No. xxx1111 bank statement for period March 1, 2011 thru March 31, 2011.
- Exhibit 19** Atlantic Stewardship Bank Account No. xxx1111 bank statement for period April 1, 2011 thru May 1, 2011 with check nos. 1145 and 1148.
- Exhibit 20** Attorney Trust Account No. xxx1111 check no. 1149 dated May 2, 2011 payable to Danielle Michalski in the amount of \$18,500.00.
- Exhibit 21** Atlantic Stewardship Bank Account No. xxx1111 bank statement for period May 1, 2011 thru May 31, 2011 with check nos. 1149 and 1150.
- Exhibit 22** August 2, 2011 letter from Frank Catania, Jr., Esq. to Howard Butensky, Esq. enclosing check no. 1178 in the amount of \$6,809.00.
- Exhibit 23** Atlantic Stewardship Bank Account No. xxx1111 bank statement for period August 1, 2011 thru August 31, 2011.
- Exhibit 24** August 4, 2011 letter from Patrick J. Carroll, Carroll title Agency, Inc. to Frank Catania, Jr., Esq.
- Exhibit 25** July 5, 2012 letter from Frank Catania, Jr., Esq. to Office of Attorney Ethics, Mimi Lakind, Esq.
- Exhibit 26** Attorney Business Account No. xxx1081 check no. 1760 dated September 7, 2012 payable to Catania & Ehrlich, P.C. Trust Account in the amount of \$5,000.00.
- Exhibit 27** IOLTA/Catania & Ehrlich, PC Attorney Trust Account Summary of all Accounts for period September 1, 2012 to September 30, 2012.
- Exhibit 28** May 24, 2013 letter from Frank Catania, Jr., Esq. to Missy Urban, Deputy Ethics Counsel, Office of Attorney Ethics.
- Exhibit 29** Handwritten notes from Amorosi dated December 21, 2011 and December 28, 2011.
- Exhibit 30** September 10, 2013 letter from Missy Urban, Deputy Ethics Counsel to Frank Catania, Jr., Esq.

NISSENBAUM LAW GROUP, LLC
2400 Morris Avenue, Suite 301
Union, New Jersey 07083
908-686-8000
Gary D. Nissenbaum, Esq., (NJ ID. No. 033181984),
Attorneys for Respondent Frank Catania, Jr., Esq.

2014 JUN 30 10:15

OFFICE OF ATTORNEY ETHICS,
Complainant,

vs.

FRANK CATANIA, JR., ESQ.,
Respondent.

SUPREME COURT OF NEW JERSEY
OFFICE OF ATTORNEY ETHICS

Docket Number: XIV-2013-0118E

VERIFIED ANSWER TO COMPLAINT

Respondent, FRANK CATANIA, JR., ESQ. (“Respondent”), hereby responds to the Complaint of the Office of Attorney Ethics (“OAE”) as follows:

GENERAL ALLEGATIONS

1. Respondent admits the allegations contained in paragraph 1 of the General Allegations of the Complaint.
2. Respondent admits the allegations contained in paragraph 2 of the General Allegations of the Complaint.
3. Respondent admits the allegations contained in paragraph 3 of the General Allegations of the Complaint.
4. Respondent admits the allegations contained in paragraph 4 of the General Allegations of the Complaint.

COUNT ONE

1. Respondent repeats its responses to the General Allegations of the Complaint as if more fully set forth herein.

2. Respondent admits the allegations contained in paragraph I-2 of Count One of the Complaint.

3. Respondent admits the allegations contained in paragraph I-3 of Count One of the Complaint.

4. Respondent denies the allegations contained in paragraph I-4 of Count One of the Complaint. The retainer agreement was provided to the OAE by letter dated April 16, 2014.

5. Respondent admits the allegations contained in paragraph I-5 of Count One of the Complaint.

6. Respondent admits the allegations contained in paragraph I-6 of Count One of the Complaint.

7. Respondent admits the allegations contained in paragraph I-7 of Count One of the Complaint.

8. Respondent admits the allegations contained in paragraph I-8 of Count One of the Complaint.

9. Respondent admits the allegations contained in paragraph I-9 of Count One of the Complaint.

10. Respondent admits the allegations contained in paragraph I-10 of Count One of the Complaint.

11. Respondent denies the allegations contained in paragraph I-11 of Count One of the Complaint. As set forth in Exhibit 5 to the Complaint, Romei executed the document on or about November 7, 2009.

12. Respondent admits the allegations contained in paragraph I-12 of Count One of the Complaint.

13. Respondent admits the allegations contained in paragraph I-13 of Count One of the Complaint.

14. Respondent admits the allegations contained in paragraph I-14 of Count One of the Complaint.

15. Respondent denies the allegations contained in paragraph I-15 of Count One of the Complaint. The basis for the denial is that there was no such requirement. As quoted in paragraph I-14 of the Complaint, the November 12, 2009 title endorsement attached to the Complaint as Exhibit 7 states, "Riparian Grant Requirement **may be** omitted at closing provided an escrow is held in the amount of \$190,000.00 pending payment to the State of New Jersey. Note: Escrow funds **can be** used to make payment." Emphasis added.

16. Respondent admits the allegations contained in paragraph I-16 of Count One of the Complaint.

17. Respondent admits the allegations contained in paragraph I-17 of Count One of the Complaint.

18. Respondent admits the allegations contained in paragraph I-18 of Count One of the Complaint.

19. Respondent admits the allegations contained in paragraph I-19 of Count One of the Complaint.

20. Respondent admits the allegations contained in paragraph I-20 of Count One of the Complaint.

21. Respondent admits the allegations contained in paragraph I-21 of Count One of the Complaint.

22. Respondent admits the allegations contained in paragraph I-22 of Count One of the Complaint.

23. Respondent admits in part and denies in part the allegations contained in paragraph I-23 of Count One of the Complaint as follows:

- a) The amount that should have been in the Gassib account (2-1179) is listed correctly as \$4,583.33, however these funds were not being held for a client as alleged in the Complaint. These funds were Respondent's legal fees for the Gassib matter.
- b) The amount that should have been in the Amorosi account (4-3687) is incorrectly listed as \$190,000. The \$15,000 loan was authorized. After the loan, the balance should have been \$175,000 as set forth in the Complaint in paragraph I-21 and in Exhibit 11 to the Complaint.
- c) The amount in the Zizzo account (4-3713) is listed incorrectly as \$30,301.32. The correct amount as set forth in Exhibit 10 to the Complaint, should be \$250.
- d) The amount that should have been in the Zaturroski account (4-3714) is listed correctly as \$10,113.
- e) The amount that should have been in the Sanford account is listed correctly as \$2,500.

24. Respondent denies the allegations contained in paragraph I-24 of Count One of the Complaint. There was no shortage. The \$15,000 loan was authorized and paid out of the Amorosi account. No other clients' balances were impacted. Also, \$4,583.33 represented the Respondent's legal fees on the Gassib matter.

25. Respondent admits the allegations contained in paragraph I-25 of Count One of the Complaint.

26. Respondent admits the allegations contained in paragraph I-26 of Count One of the Complaint.

27. Respondent admits the allegations contained in paragraph I-27 of Count One of the Complaint.

28. Respondent admits in part and denies in part the allegations contained in paragraph I-28 of Count One of the Complaint as follows:

- a) The amount that should have been in the Gassib account (2-1179) is listed correctly as \$4,583.33, however these funds were not being held for a client as alleged in the Complaint. These funds were Respondent's legal fees for the Gassib matter.
- b) The amount that should have been in the Amorosi account (4-3687) is ***incorrectly*** listed as \$190,000. The loans were authorized and paid out of the Amorosi account. The correct balance for the Amorosi ledger on January 4, 2011 was \$165,000. See Exhibit 11 to the Complaint as well as paragraphs I-25, I-26 and I-27 of the Complaint.
- c) The amount that should have been in the Zizzo account (4-3713) was listed ***incorrectly*** as \$1,714.50. The correct amount is \$250.

- d) The amount that should have been in the Zaturroski account (4-3714) is correctly listed as \$10,113.
- e) The amount that should have been in the Sanford account is correctly listed as \$2,500.

29. Respondent denies the allegations contained in paragraph I-29 of Count One of the Complaint. There was no shortage on January 4, 2011. The loans were authorized and paid out of the Amorosi account. No other clients' accounts were impacted. Also, \$4,583.33 belonged to the Respondent's firm being legal fees on the Gassib matter.

30. Respondent denies the allegations contained in paragraph I-30 of Count One of the Complaint. There was no shortage and there were no misappropriations. The loans were authorized by Amorosi.

31. Respondent admits the allegations contained in paragraph I-31 of Count One of the Complaint.

32. Respondent admits the allegations contained in paragraph I-32 of Count One of the Complaint.

33. Respondent admits the allegations contained in paragraph I-33 of Count One of the Complaint.

34. Respondent admits the allegations contained in paragraph I-34 of Count One of the Complaint, with the caveat that the bank inaccurately reflected the balance after check #1144 was cashed as \$18,391.86. Nevertheless, the Respondent admits that the \$16,441.86 balance referenced in paragraph I-34 of the Complaint was accurately reflected after the bank corrected an encoding error as set forth in Exhibit 18 of the Complaint.

35. Respondent admits in part and denies in part the allegations contained in paragraph I-35 of Count One of the Complaint as follows:

- a) The amount that should have been in the Gassib account (2-1179) is correctly listed as \$4,583.33, however these funds were not being held for a client as alleged in the Complaint. These funds were Respondent's legal fees for the Gassib matter.
- b) The amount that should have been in the Amorosi account (4-3687) is incorrectly listed. Due to the two loans and the error of the Respondent to remember to repay the two loans, the balance on this account should have been listed as -\$18,191 as set forth in Exhibit 11 of the Complaint.
- c) The amount that should have been listed in the Zizzo account (4-3713) is listed correctly as \$250.
- d) The amount that should have been in the Zaturroski account (4-3714) is listed incorrectly at \$200. The balance on this account was \$0.00 by March 10, 2011.
- e) The amount that should have been in the Michalski account (4-3718) is listed correctly as \$19,500.

36. Respondent denies the allegations contained in paragraph I-36 of Count One of the Complaint. The Respondent maintained \$4,583.33 of attorneys' fees in the trust account.

37. Respondent denies the allegations contained in paragraph I-37 of Count One of the Complaint.

38. Respondent admits that he posted the funds to the Amorosi ledger but cannot admit but denies the implication of the balance of the allegation that he purposefully used the deposit to cover the Michalski matter.

39. Respondent admits the allegations contained in paragraph I-39 of Count One of the Complaint.

40. Respondent admits in part and denies in part the allegations contained in paragraph I-40 of Count One of the Complaint as follows:

- a) The amount that should have been in the Gassib account (2-1179) is listed correctly as \$4,583.33, however these funds were not being held for a client as alleged in the Complaint. These funds were Respondent's legal fees for the Gassib matter.
- b) The amount that should have been in the Amorosi account (4-3687) is listed incorrectly. Due to the two loans and the error of the Respondent to remember to repay the two loans, the balance on this account should have been -\$3,191 as set forth in Exhibit 11 of the Complaint, to wit:

+ \$190,000 beginning balance
- \$10,000 loan
- <u>\$183,191 payment for grant to State of New Jersey</u>
- \$3,191 AMOROSI BALANCE AS OF APRIL 26, 2011
+ <u>\$4,583.33 Gassib legal fees</u>

1,392.33 TOTAL BALANCE AS OF APRIL 26, 2011

- c) The amount that should have been in the Zizzo account (4-3713) is listed correctly as \$250.
- d) The amount that should have been in the Michalski account (4-3718) is listed incorrectly. The correct amount is \$19,536.

41. Respondent denies the allegations contained in paragraph I-41 of Count One of the Complaint. It appears that the Complaint has a typographical error because it alleges that on March 31, 2011 there was a shortage of \$24,900.47 (I-36 of the Complaint) and on March 31, 2011 there was a shortage of \$9,900.47 (I-41 of the Complaint). The Respondent maintained \$4,583.33 of attorneys' fees in the trust account.

42. Respondent admits the allegations contained in paragraph I-42 of Count One of the Complaint.

43. Respondent admits the allegations contained in paragraph I-43 of Count One of the Complaint.

44. Respondent admits in part and denies in part the allegations contained in paragraph I-44 of Count One of the Complaint. The Respondent admits that he deposited \$15,000 into #XXX111 on April 26, 2011 to repay a loan made by Amorosi to the Respondent. The Respondent admits there was a distribution on the Michalski matter on May 2, 2011 but denies that there was a distribution on May 4, 2011.

45. Respondent admits the allegations contained in paragraph I-45 of Count One of the Complaint.

46. Respondent admits the allegations contained in paragraph I-46 of Count One of the Complaint.

47. Respondent admits the allegations contained in paragraph I-47 of Count One of the Complaint.

48. Respondent admits the allegations contained in paragraph I-48 of Count One of the Complaint.

49. Respondent denies the allegations contained in paragraph I-49 of Count One of the Complaint.

50. Respondent admits the allegations contained in paragraph I-50 of Count One of the Complaint.

51. Respondent admits the allegations contained in paragraph I-51 of Count One of the Complaint.

52. Respondent admits the allegations contained in paragraph I-52 of Count One of the Complaint.

53. Respondent admits the allegations contained in paragraph I-53 of Count One of the Complaint.

54. Respondent admits the allegations contained in paragraph I-54 of Count One of the Complaint.

55. Respondent admits the allegations contained in paragraph I-55 of Count One of the Complaint.

56. Respondent admits the allegations contained in paragraph I-56 of Count One of the Complaint, but denies that the words “purportedly” and “allegedly” are appropriate given that they imply that the authorizations may not have been legitimate.

57. Respondent admits the allegations contained in paragraph I-57 of Count One of the Complaint.

58. Respondent is without sufficient knowledge to admit or deny the allegations. Respondent is not yet in possession of discovery pursuant to *R. 1:20-5(a)(1)*.

59. Respondent admits the allegations contained in paragraph I-59 of Count One of the Complaint. The Respondent contends that none of the parties listed had any authority over the funds.

60. Respondent denies the allegations contained in paragraph I-60 of Count One of the Complaint.

61. Respondent denies the allegations contained in paragraph I-61 of Count One of the Complaint.

62. Respondent denies the allegations contained in paragraph I-62 of Count One of the Complaint.

SEPARATE DEFENSES

First Separate Defense

The Respondent has an unblemished ethics record for his entire twenty-three year career as a member of the Bar.

Second Separate Defense

Any misappropriation was unintentional and was, at most, negligent.

Third Separate Defense

The Respondent had Amorosi's authorization for Respondent's two loans.

Fourth Separate Defense

The Respondent has cooperated with the OAE and its investigators.

Fifth Separate Defense

The Respondent's negligence has not impaired the public's perception of the legal profession.

Sixth Separate Defense

The Respondent did not cause any financial injury to any client.

Seventh Separate Defense

The Respondent has implemented additional accounting procedures recommended by the OAE.

Eighth Separate Defense

This matter is aberrational. It does not represent a pattern.

Ninth Separate Defense

As soon as the shortfall was brought to Respondent's attention, he properly addressed the shortfall.

Tenth Separate Defense

There are no client complaints against the Respondent.

Eleventh Separate Defense

The Respondent has implemented new office procedures to prevent the recurrence of the matters set forth in the Complaint.

MITIGATING CIRCUMSTANCES PURSUANT TO R. 1:20-4(e)(2)

Respondent states in mitigation of the claims that the loans were authorized by Amorosi and the failure to replace those funds was a result of Respondent's delay in remembering the existence of those loans. The Sellers had no interest in the funds; nor did the State of New Jersey; nor the title company. Therefore, Amorosi had the absolute right to give the Respondent permission to take a portion of those funds as a loan.

Respondent had every intention of replacing the funds he was authorized to borrow. The fact that he did not do so quickly enough because of his memory lapse, caused a shortfall, but that shortfall was the product of unintentional human error. Admittedly, Respondent did not put in place sufficient safeguards to prevent him from forgetting about the loans from Amorosi. Respondent has increased the controls on his bookkeeping procedures and has instituted new office procedures that call for adequate coverage by office staff.

RESPONDENT HEREIN REQUESTS DISCOVERY PURSUANT TO R. 1:20-5(a)(1)

Kindly provide the following within 20 days of receipt of this request:

- Any writing or other tangible object including those obtained from or belonging to the Respondent;
- Any written statements, if any, including any memoranda reporting or summarizing oral statements, made by any witness, including the Respondent;
- Any results or reports of mental or physical examinations and of scientific tests or experiments made in connection with the matter;
- The names, addresses and telephone numbers of all persons known to have relevant knowledge or information about the matter, including a designation by the presenter as to which of those persons will be called as witnesses;

- Any police reports and any investigative reports;
- The name and address of each person expected to be called as an expert witness, the expert's qualifications, the subject matter on which the expert will testify, a copy of all written reports submitted by the expert or, if none, a statement of the facts and opinions to which the expert will testify and a summary of the grounds for each opinion; and

- Any final disciplinary investigative report;
- All transcripts of interviews of respondent and witnesses;
- Any other discovery in possession of the Office of Attorney Ethics.

RESPONDENT REQUESTS A PREHEARING CONFERENCE PURSUANT TO R. 1:20-5(b)(1)

Respondent requests a prehearing conference in this matter.

RESPONDENT REQUESTS A HEARING PURSUANT TO R. 1:20-4(e)(2)

Respondent requests a hearing on this matter pursuant to R. 1:20-4(e)(2). Respondent requests an opportunity to be heard on the charges and in mitigation. Respondent requests an opportunity to be heard due to genuine disputes of material fact pursuant to R. 1:20-6(c)(1).

RESPONDENT HEREIN DESIGNATES HIS COUNSEL PURSUANT TO R. 1:20-4(g)

Respondent designates GARY D. NISSENBAUM, ESQ., of the Nissenbaum Law Group, LLC as his counsel of record in this matter.

NISSENBAUM LAW GROUP, LLC
Attorneys for Respondent Frank Catania, Jr., Esq.

BY: 
GARY D. NISSENBAUM

June 19, 2014

CERTIFICATION OF SERVICE

On the date set forth below, I caused the original and one copy of the Verified Answer to be delivered via overnight mail for filing with the Office of Attorney Ethics, to the attention of Missy Urban, Esq., Deputy Ethics Counsel, Office of Attorney Ethics, 840 Bear Tavern Road, Suite 1, Ewing, NJ 08628.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: *June 19, 2014*


LAURA ORRIOLS, ESQ.

NISSENBAUM LAW GROUP, LLC
2400 Morris Avenue, Suite 301
Union, New Jersey 07083
908-686-8000
Gary D. Nissenbaum, Esq., (NJ ID. No. 033181984)
Attorneys for Respondent, Frank Catania, Jr., Esq.

OFFICE OF ATTORNEY ETHICS,

Complainant,

vs.

FRANK CATANIA, JR., ESQ.

Respondent.

SUPREME COURT OF NEW JERSEY
OFFICE OF ATTORNEY ETHICS

Docket Number: XIV-2013-0118E

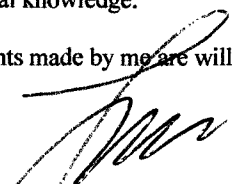
**VERIFICATION of
FRANK CATANIA, JR., ESQ.**

I, Frank Catania, Jr., Esq., am the respondent in the within disciplinary action and hereby certify as follows:

1. I have read every paragraph of the foregoing Answer to the Complaint and verify that the statements therein are true and based on my personal knowledge.

2. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATED: 6/18/2014



FRANK CATANIA, JR., ESQ.