

OFFICE OF ATTORNEY ETHICS

OF THE

SUPREME COURT OF NEW JERSEY



CHARLES CENTINARO
DIRECTOR

PHONE: (609) 530-4008
FAX: (609) 530-5238

P.O. BOX 963
TRENTON, NEW JERSEY 08625

July 6, 2016

Via Regular & Certified Mail
7011 1570 0003 3731 1134

Scott B. Piekarsky, Esq.
Piekarsky & Associates, LLC
191 Godwin Avenue
Wyckoff, New Jersey 07481

Re: Office of Attorney Ethics v. Annette P. Alfano, Esq.
Docket No.: XIV-2015-0373E

Dear Mr. Piekarsky:

Pursuant to your representation that you are authorized to accept service in this matter, I enclose two (2) copies of our complaint and the original and one (1) copy of an Acknowledgment of Service. Please complete and return the original Acknowledgment to me in the envelope provided.

In accordance with *R.1:20-4(e)*, your client is required to file a written answer within twenty-one (21) days of your receipt of this complaint. Please note that your client must personally verify the answer. Kindly file the original and one (1) copy of your client's answer and Acknowledgment of Service **directly with me**.

In filing your client's answer, you must follow *In re Gavel*, 22 N.J. 248, 263 (1956) and *R.1:20-4(e)*, which requires the answer to contain:

- (1) a full, candid and complete disclosure of all facts reasonably within the scope of the formal complaint;
- (2) all affirmative defenses, including all claim of mental or physical disability, if any, and whether it is alleged to be causally related to the offense charged;
- (3) any mitigating circumstances;
- (4) a request for a hearing either on the charges or in mitigation; and

- (5) any constitutional challenges to the proceedings. *R.1:20-4(e)*.

You are advised that, while the burden of proof by clear and convincing evidence is on disciplinary authorities to establish unethical conduct, the burden of going forward on all properly raised affirmative defenses and mitigating factors, including claims of mental and physical disability, if any, and whether such defenses or claims are causally related to the offense charged, is on your client. The burden of proof for all medical/psychiatric defenses is clear and convincing evidence. *R.1:20-6(c)(2)(B)*.

Please note that your client must personally verify the answer by attaching and signing the following form to the answer:

VERIFICATION OF ANSWER

I, _____, 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.

DATE: _____

(Sign Name Here)

TAKE NOTICE THAT YOUR CLIENT'S FAILURE TO FILE A TIMELY, VERIFIED ANSWER WILL CONSTITUTE AN ADMISSION OF THE CHARGES. SUCH FAILURE MAY ALSO RESULT IN YOUR CLIENT'S IMMEDIATE TEMPORARY SUSPENSION FROM PRACTICE. IN EITHER EVENT, NO FURTHER HEARING NEED BE HELD AND THE ENTIRE RECORD, OR A RECORD SUPPLEMENTED BY THE PRESENTER, IN THIS MATTER CAN BE CERTIFIED DIRECTLY TO THE DISCIPLINARY REVIEW BOARD FOR IMPOSITION OF SANCTION, ALL PURSUANT TO *R.1:20-6(c)(1)*, *R.1:20-4(e)* and *(f)* AND *R.1:20-11*.

This matter will be prosecuted before a hearing panel. Pursuant to *R.1:20-7(i)*, you are entitled to the issuance of subpoenas necessary and relevant to your client's defense. This application should be directed to the hearing panel chair or any special ethics master at least two weeks prior to the hearing date. Your failure to timely request the issuance of subpoenas will constitute a waiver.

Scott B. Piekarsky, Esq.

July 6, 2016

Page 3

Pursuant to *R. 1:20-5(a)*, discovery of all information specified therein is requested. In the event that any class of information specified in that rule is not available, a written representation to that effect is required.

If you have any questions regarding this matter, you should promptly communicate with me at (609) 530-4373.

Very truly yours,



Christina Blunda Kennedy
Deputy Ethics Counsel

CBK/ei

Enclosures

cc: Michael F. Brandman, Esq., Secretary
District XII Ethics Committee (w/encl. – Complaint only)
Steve Harasym, Disciplinary Auditor (w/o encl.)
William M. Ruskowski, Chief of Investigations (w/o encl.)
Barbara M. Galati, Assistant Chief Disciplinary Investigator (w/o encl.)
OAE Records Section (w/encl.)

OFFICE OF ATTORNEY ETHICS
SUPREME COURT OF NEW JERSEY
P.O. BOX 963
TRENTON, NEW JERSEY 08625
609-530-5238
Trial Counsel: Christina Blunda Kennedy

SUPREME COURT OF NEW JERSEY
District XIV Ethics Committee
Docket No.: XIV-2015-0373E

OFFICE OF ATTORNEY ETHICS,	:	
Complainant	:	
	:	COMPLAINT
v.	:	Misconduct (Complex)
	:	R. 1:20-4(b)
ANNETTE P. ALFANO,	:	
Respondent	:	

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

GENERAL ALLEGATIONS

1. Respondent was admitted to the practice of law in the State of New Jersey in 1984.
2. Respondent is currently an Associate with the Law Offices of Peter N. Laub, Jr. & Associates located at 1030 Route 202 South, Branchburg, New Jersey 08876.
3. Prior to joining the Law Offices of Peter N. Laub, Jr. & Associates, Respondent was a solo practitioner who maintained an office for the practice of law at 1812 Front Street, Scotch Plains, New Jersey 07076.

4. At all relevant times herein, Respondent maintained the following bank accounts in connection with her law practice:

Bank of America Attorney Trust Account No.: XXXXX 5200; and

Wells Fargo Attorney Business Account No.: XXXXX 8426.

COUNT ONE

1. The General Allegations are repeated as if set forth at length herein.

2. The Community Group, LLC is a limited liability corporation engaged in the business of buying, renovating and re-selling real estate.

3. Kerry Gillon (hereinafter "Gillon") was the principal and authorized agent for The Community Group.

4. Respondent represented The Community Group located at 1812 Front Street, Scotch Plains, New Jersey, which was the same office building where Respondent maintained her law practice.

5. Respondent also represented Community Development Resources Corporation, which is another for-profit corporation associated with Gillon that is engaged in the business of buying, renovating and re-selling real estate.

6. In or around February 2010, Gillon entered into an agreement with Jaswans Masson (hereinafter "Masson") to purchase, rehabilitate and re-sell a residential building located in Hillside, New Jersey.

7. The agreement provided that Masson would purchase the building, which The Community Group and Gillon would rehabilitate, and upon completion of the rehabilitation, the property would be re-sold with the proceeds being distributed between Masson and The Community Group.

8. In or around February 2010, Gillon, in her capacity as authorized agent for The Community Group, asked Masson for \$40,000.00 to be held in escrow regarding the purchase of a different property, located at 276 Hunterdon Street, Newark, New Jersey.

9. Masson agreed to loan the money to The Community Group provided it would be held in escrow in the attorney trust account of the attorney representing The Community Group.

10. Respondent agreed to serve as the escrow agent for this loan as evidenced by a February 22, 2010 letter that she wrote to Masson advising him that her law firm “will be holding the sum of \$40,000.00 in regard to the purchase of a new construction, 2-family property, located at 276 Hunterdon Street, Newark, New Jersey. Upon receipt of these funds, same will be held until closing of title. If the closing date does not take place within five weeks from the date of this letter, the funds will be returned to you. The letter concludes that “[i]t is further acknowledged that a service fee of \$1,300.00 a week will be paid until the funds are returned.” (Exhibit 1).

11. On March 2, 2010, Gillon, individually, and as authorized agent for The Community Group, signed a promissory note whereby “FOR VALUE RECEIVED, [she] promise[d] to pay to the order of Jaswans Masson and/or his assigns the sum of Forty Thousand Dollars (\$ 40,000.00). Said sum shall be paid on or before April 2, 2010.” The promissory note goes on to note that weekly payments in the amount of \$1,300.00 will be made until the loan is paid in full. (Exhibit 2).

12. Respondent signed the promissory note as a witness. (Exhibit 2).

13. On March 2, 2010, Masson wrote a check made payable to the Respondent’s attorney trust account in the amount of \$40,000.00.

14. Respondent deposited this check into her attorney trust account on the same date.

15. Between March 3, 2010 and March 15, 2010, Respondent disbursed the \$40,000.00 to different parties as directed by Gillon.

16. By March 15, 2010, the entire \$40,000.00 had been disbursed by Respondent.

17. Prior to disbursing the funds as directed by Gillon, Respondent never contacted or obtained the consent or authority of Masson or his attorney, Alan J. Gottlieb, Esq. (hereinafter "Gottlieb") to do so.

18. In disbursing the \$40,000.00 solely on the direction of Gillon and without the consent or authority of Masson or his attorney, Respondent violated her fiduciary duty as escrow agent of the \$40,000.00 loan.

19. On May 18, 2010, Respondent wrote a letter to Gottlieb advising that a management agreement with respect to the Hillside property was prepared and presented to Masson whereby Gillon would receive 30% of the net proceeds upon the sale of the Hillside property. (Exhibit 3).

20. Respondent's letter went on to state that Masson refused to sign the management agreement or propose any changes to it and consequently Gillon stopped the \$1,300.00 weekly interest payments on the loan for the Newark property. (Exhibit 3).

21. The agreement with respect to the Newark property was totally unrelated to the agreement with respect to the Hillside property.

22. After the interest payments on the \$40,000.00 loan stopped, Masson requested, through Gottlieb, that Respondent return his \$40,000.00.

23. Respondent could not return the \$40,000.00 as it had already been disbursed.

24. On May 20, 2010, Respondent wrote another letter to Gottlieb in which she stated that she had been designated as the escrow agent for the loan by her client, not by Masson, and that “[i]f the parties are unable to resolve this matter amicably, I will have no alternative but to place the money with the court for the parties to resolve in litigation.” (Exhibit 4).

25. In making this statement, Respondent misrepresented that she was still in possession of the \$40,000.00 when, in fact, the money had already been disbursed to others.

26. By reason of the foregoing, Respondent violated the following Rule(s) of Professional Conduct:

- a. RPC 1.15(a), which states that a lawyer shall hold property of clients or third persons that is in the lawyer’s possession in connection with a representation separate from the lawyer’s own property and shall safeguard such property;
- b. RPC 4.1(a), which states that in representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person;
- c. RPC 5.4(c), which states that a lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer’s professional judgment in rendering such legal services; and

- d. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

WHEREFORE, Respondent should be disciplined.

OFFICE OF ATTORNEY ETHICS

DATED:

June 30, 2016



By: Charles Centinaro, Director

ANNETTE P. ALFANO, LLC
ATTORNEY AT LAW
1812 FRONT STREET
SCOTCH PLAINS, NEW JERSEY 07076-1103
TELEPHONE: (908) 663-2175
FAX: (908) 663-2176

February 22, 2010

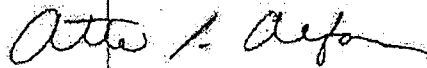
Jaswans Masson and/or his assigns

Dear Mr. Masson:

This letter is to advise you that this firm will be holding the sum of \$40,000.00 in regard to the purchase of a new construction, 2-family property, located at 276 Hunterdon Street, Newark, New Jersey. Upon receipt of these funds, same will be held until closing of title. If the closing does not take place within five weeks from date of this letter, the funds will be returned to you.

It is further acknowledged that a service fee of \$1,300.00 a week will be paid until the funds are returned.

Very truly yours,



Annette P. Alfano

Exhibit

1

The Community Group
1812 Front Street
Scotch Plains, NJ 07076
Tel. (908) 663-2112
Fax (908) 663-2113

PROMISSORY NOTE

Principal Amount: \$ 40,000.00

Date: March 2, 2010

FOR VALUE RECEIVED, the undersigned hereby promises to pay to the order of Jaswans Masson and/or his assigns the sum of Forty Thousand Dollars (\$ 40,000.00). Said sum shall be paid on or before April 2, 2010.

The undersigned further promises to pay Thirteen Hundred Dollars (\$1,300.00) a week in connection with this loan until loan is paid in full.

The undersigned further agrees to remain fully bound until this Note is fully paid. No modification by any party shall be binding unless in writing.

This Note shall be governed and enforced in accordance with the laws of the State of New Jersey.

This Note shall be binding upon and inure to the benefit of the parties, their successors, assigns, and personal representatives.

The undersigned guarantees the prompt and punctual payment of all monies due under this Note and agrees to remain bound until fully paid.

Witness:

The Community Group .

Atta P. Oefon
Atta P. Oefon

By: Kerry Gillon
Kerry Gillon, Authorized Agent
Kerry Gillon
Kerry Gillon

Exhibit

ANNETTE P. ALFANO, LLC
 ATTORNEY AT LAW
 1612 FRONT STREET
 SCOTCH PLAINS, NEW JERSEY 07076-1103
 TELEPHONE: (908) 663-2175
 FAX: (908) 663-2170

May 18, 2010

VIA FAX ONLY (732) 613-8006

Alan J. Gottlieb, Esq.
 Sapiro Gottlieb & Kroll
 One Auer Court
 East Brunswick, NJ 08816

Dear Mr. Gottlieb:

In response to your telephone messages to me, I have consulted with my client and wish to present the following information:

1. Our respective clients entered into an agreement to become partners in the purchase of a three family property located in Hillside, New Jersey. My client located the property and facilitated the purchase of the property by Mr. Masson's wife.
2. After discussions between the parties, a management agreement were prepared and presented to your client whereby my client would receive 30% of the net profits of the sale of the property in Hillside.
3. In return for the loan from Mr. Masson, my client signed a promissory note and agreed to pay \$1,300.00 per week until the closing of title for a property in Newark which was anticipated to close five weeks after the loan was made. Before the end of the five-week period, the parties met in person and agreed that the term would be extended until the property closed. It has not closed as

05/19/2010 10:58 732-513-8806
05/19/2010 09:23 9886532175

SGK LEGAL
ANNETTE P ALFANO,ESQ

PAGE 03/03
PAGE 02/02

yet; however, we expect the closing to take place in approximately 2 weeks. Your clients received payments for at least seven weeks, including time after the meeting, which would evidence their agreement to the extension.

4. The situation became a problem when the payments of \$1,300.00 stopped, due to the fact that your client refused to sign the management agreement or propose any changes thereto.

My client would very much like to resolve this matter. Please discuss with your client and advise. Thank you.

Very truly yours,



Annette P. Alfano

cc: CDR

PIEKARSKY & ASSOCIATES, L.L.C.

Counsellors at Law

191 GODWIN AVENUE
WYCKOFF, NEW JERSEY 07481

Telephone: 201-560-5000
Telecopier: 201-560-1440
www.piekarsky-law.com

e-mail spiekarsky@pielaw.com

- Certified by the Supreme Court of
New Jersey as a Civil Trial Attorney

- Rule 1:40 Mediator

SBP: 19925
August 9, 2016

VIA LAWYER SERVICE

Christina Blunda Kennedy Esq., Deputy Ethics Counsel
Office of Attorney Ethics
Supreme Court of New Jersey
Mountainview Office Park
840 Bear Tavern Road
Ewing, NJ 08628

RE: OFFICE OF ATTORNEY ETHICS V. ANNETTE P. ALFANO, ESQ.
DOCKET No.: XIV-2015-0373E

RECEIVED
2016 AUG 10 P 1:23
OFFICE OF
ATTORNEY ETHICS

Dear Ms. Kennedy:

Enclosed please find an original and one (1) copy of the Answer to the Complaint with regard to the above captioned matter.

Kindly file same and return a filed copy to this office in the self-addressed and stamped envelope provided.

Thank you for your consideration in this matter.

Respectfully,

By: Scott B. Piekarsky
SCOTT B. PIEKARSKY, ESQ.

SBP: kj

SBP:19925

Scott B. Piekarsky, Esq. (026161986)
Piekarsky & Associates, L.L.C.
191 Godwin Avenue, Suite 9
Wyckoff, NJ 07841
Tel: 201-560-5000
Fax: 201-560-1440
Attorneys for Respondent:
Annette P. Alfano, Esq.

RECEIVED
2016 AUG 10 P 1:23
ATTORNEY ETHICS

OFFICE OF ATTORNEY ETHICS,	:	SUPERIOR COURT OF NEW JERSEY
	:	DISTRICT XIV ETHICS COMMITTEE
	:	
Plaintiff,	:	DOCKET NO.: XIV-2015-0373E
	:	
v.	:	
	:	<i>DISCIPLINARY ACTION</i>
	:	
ANNETTE P. ALFANO, ESQ.,	:	VERIFIED ANSWER TO
	:	COMPLAINT
Respondent.	:	

Respondent, ANNETTE P. ALFANO, ESQ., through his attorneys, PIEKARSKY & ASSOCIATES, LLC, by way of Answer to the Complaint, says:

GENERAL ALLEGATIONS

1. Respondent hereby admits as to the allegations contained in Paragraph 1 of the General Allegation section of this Complaint.
2. Respondent hereby admits as to the allegations contained in Paragraph 2 of the General Allegation section of this Complaint.
3. Respondent hereby admits as to the allegations contained in Paragraph 3 of the General Allegation section of this Complaint.
4. Respondent hereby admits as to the allegations contained in Paragraph 4 of the General Allegation section of this Complaint.

COUNT ONE

1. Respondent hereby repeats and realleges as to the allegations contained in the General Allegation section of the Complaint.

2. Respondent hereby admits as to the allegations contained in Paragraph 2 of Count One of this Complaint.
3. Respondent hereby admits as to the allegations contained in Paragraph 3 of Count One of this Complaint.
4. Respondent hereby admits as to the allegations contained in Paragraph 4 of Count One of this Complaint.
5. Respondent hereby admits as to the allegations contained in Paragraph 5 of Count One of this Complaint.
6. Respondent hereby admits as to the allegations contained in Paragraph 6 of Count One of this Complaint.
7. Respondent hereby admits as to the allegations contained in Paragraph 7 of Count One of this Complaint.
8. Respondent hereby admits as to the allegations contained in Paragraph 8 of Count One of this Complaint.
9. Respondent hereby admits as to the allegations contained in Paragraph 9 of Count One of this Complaint.
10. Respondent hereby admits as to the allegations contained in Paragraph 10 of Count One of this Complaint.
11. Respondent hereby admits as to the allegations contained in Paragraph 11 of Count One of this Complaint.
12. Respondent hereby admits as to the allegations contained in Paragraph 12 of Count One of this Complaint.
13. Respondent hereby admits as to the allegations contained in Paragraph 13 of Count One of this Complaint.
14. Respondent hereby admits as to the allegations contained in Paragraph 14 of Count One of this Complaint.
15. Respondent hereby admits as to the allegations contained in Paragraph 15 of Count One of this Complaint.
16. Respondent hereby admits as to the allegations contained in Paragraph 16 of Count One of this Complaint.

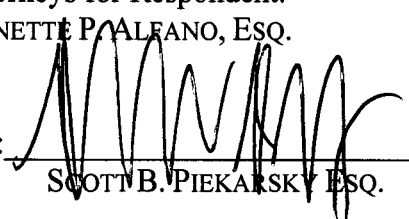
17. Respondent hereby admits as to the allegations contained in Paragraph 17 of Count One of this Complaint, but she did get the demand and authorization from her client believing the same was acceptable.
18. Respondent hereby denies as to the allegations contained in Paragraph 21 of Count One of this Complaint. Respondent believed this was appropriate and did not intend to breach any fiduciary duty.
19. Respondent hereby admits as to the allegations contained in Paragraph 19 of Count One of this Complaint.
20. Respondent hereby admits as to the allegations contained in Paragraph 20 of Count One of this Complaint.
21. Respondent hereby admits as to the allegations contained in Paragraph 21 of Count One of this Complaint.
22. Respondent hereby admits as to the allegations contained in Paragraph 22 of Count One of this Complaint.
23. Respondent hereby admits as to the allegations contained in Paragraph 23 of Count One of this Complaint.
24. Respondent hereby admits as to the allegations contained in Paragraph 24 of Count One of this Complaint.
25. Respondent hereby denies as to the allegations contained in Paragraph 25 of Count One of this Complaint.
26. Respondent hereby denies as to the allegations contained in Paragraph 26 of Count One of this Complaint.

SEPARATE DEFENSES

1. The conduct of the respondent did not rise to the level of grossly negligent conduct.
2. Complaint cannot prove it's case by clear and convincing evidence.
3. If Respondent acted improperly, it was only minor misconduct.
4. Respondent believed she has authority to disburse the funds.
5. Respondent received no benefit from the complained of conduct.

WHEREFORE, Respondent, ANNETTE P. ALFANO, ESQ., demands dismissal of the Complaint filed herein.

PIEKARSKY & ASSOCIATES, L.L.C.
Attorneys for Respondent:
ANNETTE P. ALFANO, ESQ.

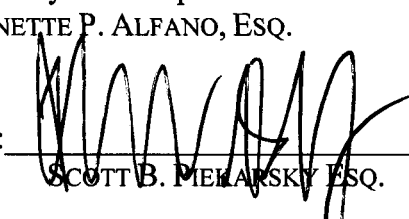
By: 
SCOTT B. PIEKARSKY ESQ.

DATED: August 9, 2016

MITIGATING FACTORS

1. Respondent has readily admitted her conduct.
2. Respondent has shown contrition and remorse.
3. Respondent has cooperated with the ethics authority.
4. Respondent's conduct was not for personal gain.
5. Respondent is employed by a law firm and no longer maintains personal office business and trust accounts.

PIEKARSKY & ASSOCIATES, L.L.C.
Attorneys for Respondent:
ANNETTE P. ALFANO, ESQ.

By: 
SCOTT B. PIEKARSKY ESQ.

DATED: August 9, 2016

REQUEST FOR HEARING

Respondent requests a hearing on the charges.

VERIFICATION OF ANSWER

I, ANNETTE P. ALFANO, 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 false, I am subject to punishment.

Dated: August 8, 2016



ANNETTE P. ALFANO, ESQ.