

JARED E. DRILL, HEARING PANEL CHAIR
Foster & Mazzie, LLC
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OFFICE OF ATTORNEY ETHICS,

Complainant,

v.

WILLIAM J. RUSH

Respondent.

SUPREME COURT OF NEW JERSEY
District XIV Ethics Committee
Docket No. XIV-2012-0273E (Switzer)
Hearing Docket No. XI-2013-0900E
Docket No. XIV-2012-0328E (Freeman)
Hearing Docket No. XI-2013-0901E

HEARING PANEL REPORT
RECOMMENDING REPRIMAND

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TO: THE HONORABLE CHAIR AND THE MEMBERS OF
THE DISCIPLINARY REVIEW BOARD

The District XIV Ethics Committee hearing panel respectfully shows:

1. Procedural History:

1. A formal hearing was held before this hearing panel consisting of Chair, Jared Drill, Esq., Mary Tom, Esq. and Mae Benson, the Public Member, on the foregoing charges on October 23, 2014. All Exhibits are submitted herewith.

2. William Rush, the Respondent, herein ("Respondent") maintains a law office at 145 Route 46 West, Suite 304, Wayne, Passaic County, New Jersey.

3. A complaint was filed against the Respondent on or about July 15, 2013. The initial presenter was Charles Centinaro.

4. Thereafter, HoeChin Kim was appointed presenter. No amendment Complaints were filed. (A copy of the Complaint is annexed hereto as Exhibit "A"). The

Respondent filed an Answer on or about September 4, 2013, through counsel Glenn Reiser. (A copy of such Answer is annexed hereto as Exhibit "B").

5. By letter dated July 6, 2012, the Complaint was served upon Respondent. (A copy of such correspondence, is annexed hereto as Exhibit "C").

6. A hearing in this matter was conducted on October 23, 2014, at the Passaic County Courthouse, 6th Floor and attended by all parties.

II. STATEMENT OF FACTS:

7. All facts in this matter were agreed upon by a Stipulation. (A copy of that Stipulation is annexed hereto as Exhibit "D").

8. The panel sees no reason to reiterate all 61 paragraphs of the facts as they were stipulated to by the parties and can be read in Exhibit "D" if necessary.

III. SUMMARY OF ALLEGATIONS:

9. The Complaint alleges the following ethical violations:

a) RPC1.1(a) – in that a lawyer shall not handle or neglect a matter entrusted to him in such a matter that his conduct constitutes gross negligence;

b) RPC1.3 – in that a lawyer shall act with reasonable diligence and promptness in representing a client;

c) RPC1.15(b) – in that a lawyer shall promptly deliver to client, any funds that the client is entitled to receive.

d) RPC 1:15(b) – in that a lawyer shall promptly deliver to a third person the Switzer and their mortgagee creditor, funds that the third person is entitled to receive;

e) RPC 8.4(c) – in that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

f) RPC 1.1.5(a) – in that a lawyer is not to negligently misappropriate client funds entrusted to his care;

g) RPC 1.15(b) – in that a lawyer shall promptly deliver to a third person funds that the third person is entitled to receive;

h) RPC 8.4(c) in that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

i) RPC 1.15(a) – a lawyer is to hold property of kind from the lawyers own property;

j) RPC 1.15(d) and Rule 1:27-6(c) – in that Respondent failed to comply with the provision of Rule 1:26-6 by not conducting and maintaining reports of monthly three way reconciliation and

k) RPC 1.15 (d) and Rule 1:21-6(d) -- in that Respondent failed to comply provision of Rule 1:21-6 by allowing inactive balances to remain in his attorney trust account. See Exhibit "A" which is a copy of the Complaint.

IV. Findings of Fact/Conclusions of Law:

A. Switzer Greivance RPC 1.1(a):

10. A lawyer shall not handle nor neglect a matter entrusted to him in such a manner that his conduct constitutes gross negligence.

11. The panel unanimously concluded the respondent was not grossly negligent in his handling of the Switzer closing. This was a simple clerical mistake and as soon as he learned of the mistake he took actions to correct his mistake including payoig off the existing mortgages, writing letters to all the creditors and immediately taking all steps necessary to correct the mistake. Therefore, while the matter was a neglectful mistake it does not rise to the level of gross negligence.

B. RPC 1.3

13. A lawyer shall act with reasonable diligence and promptness in representing a client.

14. The panel unanimously concluded that while the respondent was certainly neglectful in this matter and did lack reasonable diligence and promptness in representing his client. It is also quite clear the respondent was not diligent in determining whether or not the mortgages had been appropriately paid off as set forth in the HUD 1. Although, once the respondent learned of the mistake he took steps to correct the same. Certainly, better diligence following the closing including following up to make sure the mortgage companies were paid in full was not done here. Therefore, we do find the respondent was in violation of RPC 1.3.

C. RPC 1:15 (b)

15. A lawyer shall promptly deliver to a client in this matter "Switzer" any funds the client is entitled to receive. A lawyer shall promptly deliver to a third person the Switzers and their mortgaging creditor funds the third partisan is entitled to receive.

16. Grievant is alleging the respondent in this matter negligently misappropriated funds. Respondent did fail to deliver the funds to client, "Switzer" and failed to properly pay off a third party. The record keeping and non payment was stipulated to as part of the facts. However, the panel unanimously decides while the respondent may have been negligent there certainly was no intent to deceive or withhold the money from the appropriate party. Therefore, we do find the respondent violated RPC 1.15(b) on two occasions in the Cosa and Switzer matter. While this clearly does not arise to an intentional act it was negligent. Yet, the panel concludes this level of negligence does not rise to the level where a violation can be found by clear and convincing evidence. Once the respondent learned of the mistake he took the appropriate steps to correct the same.

D. RPC 8.4(c)

17. It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

18. The panel unanimously concluded there was no fraud, dishonesty or misrepresentation in this matter. It was purely neglect by the attorney and as soon as he learned of the mistake he took steps to correct the same and insure that it will never happen again within his office. Therefore, there is clearly no dishonesty, fraud, deceit or misrepresentation in the eyes of the panel.

SECOND COUNT

E. William Freeman Grievance -RPC 1.15(a)

19. A lawyer is not to negligently misappropriate client funds entrusted to his care.

20. It is clear from the testimony from the respondent, as well as the proofs presented by the OAE the lawyer engaged in overcharges which is not allowed. While the respondent contends that this was not done intentionally, he was also unsure if the clients were ever told about the overpayments because admittedly the respondent was not at the closing. The panel unanimously agrees there was no fraud or deceit involved which was also supported by the OAE who does not allege fraud or deceit. The real question is whether or not there were overcharges to the buyer or seller at closings conducted by the respondent. It is clear in the Freeman matter there were overcharges which were inappropriately kept by the respondent and therefore, we find he was in violation of RPC 1.15(a) in the Freeman matter.

F. RPC 1.15 (b)

21. A lawyer shall promptly deliver to a third person funds that a third person are entitled to receive.

22. As mentioned above it is clear from the HUD, there were funds kept by the attorney which he was not entitled to receive. These funds should have been provided back to the buyer or seller after closing.

G. RPC 8.4(c)

23. It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

24. This point was conceded by the OAE as not being violated and therefore, will not be addressed as clearly the respondent did not violate the same.

THIRD COUNT

H. RPC 1.15(a)

25. A lawyer is to hold property of client's separate from the lawyer's own property.

26. The panel unanimously concludes there was no evidence presented that the lawyer improperly comingled funds separate from the lawyers own property, only the over charges could have been seen as improper since the respondent inappropriately held them. However, the respondent's explanation he was holding funds for post-closing costs is logical, all be it the panel is not convinced the lawyer was telling the buyer and/or seller of the holding of these payements.

I. RPC 1.15(d) and Rule 1:21-6(c)

27. In that respondent failed to comply with provisions of Rule 1:21-6(c) by not conducting and maintaining reports of three way reconcilliation.

28. There was no evidence presented by the OAE regarding this allegation and therefore, the panel did not consider the same.

CONCLUSION

29. Based upon the foregoing, the panel unanimously finds the respondent guilty by clear and convincing evidence of violating RPC 1.3; RPC 1.15 (b); RPC 1.15 (a).

30. Furthermore, the panel unanimously finds that the respondent did not violate RPC 1.1 (a); RPC 8.4 (C); RPC 8.4 (c); RPC 1.15 (d) and Rule 1:21-6 (c).

31. In determining a penalty, the committee considered both agravating and mitigating factors. In mitigation, the panel considers the OAE's request the respondent be reprimanded. The OAE was not seeking suspension.

32. Additionally, the respondent admitted his mistakes, he appeared to be humble and genuine. Respondent admitted this was a learning experience and he now advises all clients of the overpayments during the closings. He reiterated it was not his intent to be deceitful and the panel did find him credible in that regard.

33. The panel also took into consideration the respondent's immediate action to correct his error once he learned upon the same, in particular, with the Switzer matter. There were no aggravating factors considered by the panel.

34. Based upon the foregoing, the panel unanimously recommends the respondent be reprimanded.

DISTRICT H-A NORTH ETHICS COMMITTEE

BY: 

JARED E. DRILL, ESQ.
Hearing Panel Chair

Dated: December 11, 2014