

=====
This opinion is uncorrected and subject to revision before
publication in the New York Reports.

No. 170
In the Matter of Peter J.
Galasso, &c., An Attorney and
Counselor-at-Law.

Grievance Committee for the Ninth
Judicial District,
Respondent;
Peter J. Galasso,
Appellant.

Jeffrey L. Catterson, for appellant.
Matthew Lee-Renert, for respondent.
Nassau County Bar Association; Thomas F. Liotti, amici
curiae.

PER CURIAM:

Petitioner instituted a disciplinary proceeding against
respondent attorney Peter J. Galasso alleging ten charges of
professional misconduct. The essence of the petition is that
respondent failed to properly supervise the firm's bookkeeper
resulting in the misappropriation of client funds and that he

breached his fiduciary duty by failing to safeguard those funds. Although we find the bulk of the charges were properly sustained, we modify to dismiss the charge alleging respondent's failure to timely comply with the lawful demands of the Grievance Committee.

At all times relevant to this appeal, respondent has been a partner of the law firm known as Galasso & Langione, LLP (the Galasso Langione firm).¹ Anthony Galasso, respondent's brother, was also employed by the firm and had, over the course of several years, worked his way up from an entry-level position as a file clerk and messenger to become the firm's bookkeeper and office manager.

In June 2004, respondent represented Steven Baron in a matrimonial action commenced by Wendy Baron. The parties and their attorneys entered into an escrow agreement through which respondent was the designated escrow agent for the proceeds from a sale of commercial property owned by Steven Baron. Respondent agreed to hold the sum of \$4,840,862.34 in an interest-bearing escrow account, pending further order of Supreme Court in the matrimonial action. Anthony Galasso, in his capacity as office manager, deposited the funds into an escrow account at Signature Bank (the Baron escrow account). Respondent and fellow partner James Langione were the only authorized signators on the account

¹ The firm was subsequently known as Galasso, Langione & Botter, LLP and is currently known as Galasso, Langione, Catterson & LoFrumento, LLP.

application. However, Anthony Galasso apparently altered the application to permit electronic fund transfers and to include himself -- a nonlawyer -- as a signator.

Between June 23, 2004 and January 17, 2007, Anthony Galasso transferred approximately \$4,501,571 from the Baron escrow account into six other firm accounts maintained at Signature Bank through the use of roughly 90 internet transfers. It seems that the Baron funds were used to replace money that Anthony Galasso had already removed from the firm accounts. Transferred funds from the Baron escrow account were then disbursed to respondent, firm employees and other entities in the course of business, all without the knowledge of the firm's principals or the consent of the Barons. In particular, approximately \$360,000 in funds transferred from the Baron escrow account were used to finance the purchase of the firm's office condominium. To escape detection, Anthony Galasso had the genuine Baron escrow account statements, generated by the bank, diverted to a post office box and fabricated false statements for review by the firm. Although the Barons demanded payment of the funds held in escrow, more than \$4.3 million remains due and owing to them.

In June 2006, the Galasso Langione firm received \$800,000 on behalf of the Estate of George Carroll in settlement of a medical malpractice/wrongful death action and Anthony Galasso deposited the funds into the firm's IOLA (Interest on

Lawyer Account) at M&T Bank. The following month, the firm received \$175,000 on behalf of Adele Fabrizio in connection with a personal injury action. Anthony Galasso also deposited these funds into the firm's M&T IOLA. Anthony Galasso misappropriated the bulk of these funds by forging the partners' signatures on IOLA checks. With respect to the IOLA, respondent's practice had been to review monthly financial reports generated by Anthony Galasso, rather than the account statements themselves. To date, despite the clients' demands for the return of their funds, the firm has returned only \$85,791.36 to the Estate of Carroll; no funds have been returned to Fabrizio.

Anthony Galasso confessed to the theft of the above funds on January 18, 2007 and ultimately pleaded guilty to two counts of grand larceny in the first degree, ten counts of falsifying business records in the first degree and ten counts of criminal possession of a forged instrument in the second degree. He was sentenced to 2½ to 7½ years imprisonment, as well as \$2,000,000 in restitution. Respondent cooperated fully with the criminal investigation. Indeed, the Nassau County District Attorney's Office submitted a letter to the Grievance Committee providing its conclusions that no one else in the firm had had knowledge of the theft and that nothing in the documents presented to the firm by Anthony Galasso would have raised any suspicion regarding the accounts. Respondent has also commenced civil suits against the banks involved, in an attempt to recover

the client funds.

As noted above, the Grievance Committee commenced a disciplinary proceeding against respondent alleging ten charges of professional misconduct.² The matter was referred to a Special Referee who sustained all ten charges. The Appellate Division granted the Committee's motion to confirm the Referee's

² Charges one, two, seven and nine allege that respondent breached his fiduciary duty to pay or deliver escrow funds, by failing to safeguard client funds and by failing to promptly pay or deliver those funds to the person entitled to them (Code of Professional Responsibility DR 9-102 [a], [c][4]; DR 1-102 [a][7] [22 NYCRR 1200.46 (a), (c)(4); 1200.3 (a)(7)] and Rules of Professional Conduct [22 NYCRR 1200.0] rules 1.15 [a], [c][4]; 8.4 [h]).

Charges six, eight and ten allege that respondent failed to supervise a nonlawyer employee resulting in the misappropriation of client funds (Code of Professional Responsibility DR 1-104 [d][2] [22 NYCRR 1200.5 (d)(2)] and Rules of Professional Conduct [22 NYCRR 1200.0] rule 5.3 [b][2][i], [ii]).

Charge three alleges that respondent was unjustly enriched by use of the Baron funds for his personal benefit (Code of Professional Responsibility DR 9-102 [a]; 1-102 [a][5], [a][7] [22 NYCRR 1200.46 (a); 1200.3 (a)(5), (a)(7)] and Rules of Professional Conduct (22 NYCRR 1200.0) rules 1.15 [a]; 8.4 [d], [h]).

Charge four alleges that respondent failed to provide appropriate accounts to the Barons with respect to their escrow funds (Code of Professional Responsibility DR 9-102 [c][3]; 1-102 [a][7] [22 NYCRR 1200.46 (c)(3); 1200.3 (a)(7)] and Rules of Professional Conduct (22 NYCRR 1200.0) rules 1.15 [a]; 8.4 [h]).

Charge five alleges that respondent failed to timely comply with the lawful demands of the Committee (Code of Professional Responsibility DR 1-102 [a][5], [a][7] [22 NYCRR 1200.3 (a)(5), (a)(7)] and Rules of Professional Conduct (22 NYCRR 1200.0) rules 8.4 [d], [h]).

report and denied respondent's cross motion to disaffirm the report (94 AD3d 30 [2d Dept 2012]). The Court also suspended respondent from the practice of law for a period of two years. This Court granted respondent leave to appeal, and we now modify.

Few, if any, of an attorney's professional obligations are as crystal clear as the duty to safeguard client funds. Rather than establishing a new or heightened degree of liability for attorneys, we find that the Appellate Division's determination is completely consistent with existing standards pertaining to the safeguarding and oversight of client funds. In other words, "a reasonable attorney, familiar with the Code and its ethical strictures, would have notice of what conduct is proscribed" (Matter of Holtzman, 78 NY2d 184, 191 [1991]).

Respondent is not bound to his clients solely by the contractual language of the escrow agreement, but also by a fiduciary relationship. "A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior" (Meinhard v Salmon, 249 NY 458, 464 [1928]; see Matter of Wallens, 9 NY3d 117, 122 [2007]). Respondent owed his clients a high degree of vigilance to ensure that the funds they had entrusted to him in his fiduciary capacity were returned to them upon request. To that end, implementation of any of the basic measures respondent has since adopted -- personal review of the bank statements, personal contact with the bank and improved

oversight of the firm's books and records -- likely would have mitigated, if not avoided, the losses.

Here, although respondent himself did not steal the money and his conduct was not venal, his acts in setting in place the firm's procedures, as well as his ensuing omissions, permitted his employee to do so. Moreover, the Baron funds were used for the benefit of respondent and the firm. That respondent has acted without venality can be a factor considered in mitigation, but is not probative of whether he has failed to preserve client funds (see e.g. Matter of Wilkins, 70 AD3d 1119, 1119-1120 [3d Dept 2010]; Matter of Abato, 51 AD3d 225, 228 [2d Dept 2008]).

Unquestionably, Anthony Galasso had devised a relatively sophisticated system and his fraud went undetected by the attorneys and accountant reviewing the documents he produced. However, respondent ceded an unacceptable level of control over the firm accounts to his brother, thereby creating the opportunity for the misuse of client funds. Had respondent been more careful in supervising the accounts and his employee, he would have been aware of the malfeasance at a much earlier time when he could have substantially mitigated the losses.

It cannot be said that there were no warning signs here. Specifically, a nearly \$5,000 "discrepancy" in the escrow account was noted by Baron's accountant, which respondent permitted Anthony Galasso to resolve with the bank. Anthony

Galasso then corrected the "discrepancy" on a fabricated account statement by showing an internet transfer of funds from the firm IOLA to the Baron escrow account. In addition, when asked to obtain a \$100,000 check from the escrow account payable to Wendy Baron, Anthony Galasso produced a check from the IOLA, which respondent then signed and provided to Mrs. Baron. The fabricated statement for the escrow account later reflected an expenditure of \$100,000 by check number 1738, despite the fact that no checks had been written on the escrow account.

A discrepancy in an escrow account should, at a minimum, be alarming to a reasonably prudent attorney. This is not to say that attorneys are prohibited from delegating certain tasks to firm employees, but any delegation must be made with an appropriate degree of oversight. We stress that it is the ethical responsibility of the attorney -- not the bookkeeper, the office manager or the accountant -- to safeguard client funds.

To be clear, respondent is not being held responsible for the criminal behavior of his brother. Rather, it is his own breach of his fiduciary duty and failure to properly supervise his employee, resulting in the loss of client funds entrusted to him, that warrant this disciplinary action. We find that charges one through four and six through ten were properly sustained.

Respondent was also charged with the failure to timely comply with the Grievance Committee's lawful demands for information (charge five) in violation of former DR 1-102 (a)(5)

and (7) and Rules of Professional Conduct (22 NYCRR 1200.0) rule 8.4 (d) and (h). Petitioner maintains that, between May 12, 2008 and July 22, 2009, it made repeated requests for information to which respondent failed to fully and timely respond and that respondent's conduct impeded and delayed its investigation.³

We find the imposition of the separate charge on this basis to be unsupported by the record. It is difficult to characterize respondent's overall participation in the disciplinary process as anything other than active. Both respondent and his counsel were in regular correspondence with the Grievance Committee and provided copious documentation in response to their requests. When particular demands could not be immediately met, respondent generally acknowledged same, explained why and stated his intention to provide the information at the earliest opportunity. Under these particular circumstances, we find that respondent's level of compliance with this investigation is inconsistent with a sustained charge of failure to timely comply with the Committee's lawful demands. Upon remittal, the Appellate Division should reconsider whether the suspension previously imposed remains an appropriate

³In particular, the Grievance Committee took issue with the responses to its requests seeking: 1) a forensic examination conducted by outside accountants to audit all Galasso & Langione firm bank accounts in the relevant time period; 2) an accounting to trace all disbursements from the Baron escrow account; 3) detailed bookkeeping records for the firm's Signature Bank and M&T IOLA accounts; and 4) copies of documents relating to the financing and purchase of the office condominium.

sanction.

Accordingly, the order of the Appellate Division should be modified, without costs, by dismissing charge five of the petition and remitting the matter to that Court for further proceedings in accordance with this opinion and, as so modified, affirmed.

* * * * *

Order modified, without costs, by dismissing charge five of the petition and remitting the matter to the Appellate Division, Second Department, for further proceedings in accordance with the opinion herein and, as so modified, affirmed. Opinion Per Curiam. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided October 23, 2012