BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL Petitioner	:	No. 16 DB 2016
v.	:	Attorney Registration No. 12779
ARSEN KASHKASHIAN, JR. Respondent	:	(Bucks County)

ORDER

AND NOW, this 28th day of July, 2017, upon consideration of the Report and Recommendation of the Hearing Committee filed on March 27, 2017; it is hereby

ORDERED that ARSEN KASHKASHIAN, JR., of Bucks County shall be subjected to **PUBLIC REPRIMAND** by the Disciplinary Board of the Supreme Court of Pennsylvania as provided in Rule 204(a)(5) of the Pennsylvania Rules of Disciplinary Enforcement. Costs shall be paid by the Respondent.

BY THE BOARD:

Board Chair

TRUE COPY FROM RECORD
Attest:

Marcee D. Sloan
Board Prothonotary
The Disciplinary Board of the
Supreme Court of Pennsylvania

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v.	:	Attorney Registration No. 12779
ARSEN KASHKASHIAN JR. Respondent	:	(Bucks County)

OPINION

On January 26, 2016, Office of Disciplinary Counsel, Petitioner, filed a Petition for Discipline alleging that Respondent, Arsen Kashkashan, violated the Rules of Professional Conduct ("RPC") and Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E."). Charge I alleged that Respondent failed to comply with mandatory overdraft rule requirements, improperly commingled funds, and made false certifications on four annual attorney registration fee forms. Charge II alleged that Respondent made false statements on three annual fee forms by failing to identify an account. Charge III alleged that Respondent engaged in improper behavior with regard to a business transaction with a client. Respondent filed an Answer to Petition on February 22, 2016 and contested the violations. On July 11, 2016,[1] September 19, 2016, and October 5, 2016, the Hearing

[1] At the disciplinary hearing on July 11, 2016, Respondent raised a staleness claim and sought dismissal of the charges against him. The evidence suggested that a complainant filed a complaint with Petitioner sometime prior to November 10, 2011. The evidence further showed that Petitioner sent DB-7 letters to Respondent on November 10, 2011 and May 22, 2013, to which Respondent replied in 2012 and 2013. Petitioner filed its Petition for Discipline on January 26, 2016. Because the issues complained of in the DB-7 Letters all related to matters occurring less than four years prior to the date of the complaint, the Hearing Committee correctly found that the charges against Respondent were not stale. However, the Committee specifically noted that it was troubled by Petitioner's failure to prosecute the matter in a timelier manner. The Hearing Committee noted that despite Petitioner having all relevant documents in 2013, it failed to file its Petition until 2016, more than four years after issuing the first DB-7 letter and more than seven years after the events which served as the basis for the Petition. The passage of time between the dates of the events complained of and the disciplinary hearing resulted in the witnesses' difficulty in recalling important factual issues.

Committee held a disciplinary hearing. At the hearing, Petitioner presented the testimony of two fact witnesses and an expert witness and entered into evidence Exhibits ODC-1–57. Respondent testified on his own behalf.

The parties filed post-hearing briefs. Petitioner argued that a lengthy suspension was the appropriate discipline while Respondent argued that a reprimand was the appropriate discipline. The Hearing Committee filed a Report with the Board on March 27, 2017, and recommended that Respondent be publicly reprimanded by the Disciplinary Board. The Hearing Committee concluded that Respondent violated RPC 1.5(b), 1.15(b), 1.15(g), 1.15(h), 1.15(m), 8.1(a), 8.4(c), and Pa.R.D.E. 219(d)(1)(ii) and 221(d). The Hearing Committee concluded that Petitioner did not meet its burden of proof to establish violations of RPC 1.2(a), 1.4(b), 1.8(a)(1)-(3), 1.15(e), 8.4(b), and Pa.R.D.E. 221(f). The Hearing Committee found two aggravating factors in that Respondent lacked remorse and failed to admit on direct examination that he commingled funds, and found in mitigation that Respondent had no prior history of discipline. The Hearing Committee cited five cases that resulted in the imposition of public reprimands, and noted that Respondent's case was more similar to the cited authority than the cases cited by Petitioner in support of suspension. Initially, Petitioner filed a brief on exceptions to the Hearing Committee's Report and recommendation, but later withdrew the exceptions. The Board adjudicated this matter on July 21, 2017.

In attorney disciplinary matters, Petitioner bears the burden of establishing misconduct by a preponderance of clear and satisfactory evidence. ***Office of Disciplinary Counsel v. Anthony Cappuccio***, 48 A.3d 1231, 1236 (Pa. 2012). After a full review of the record and the parties' briefs, and for the reasons stated herein, we conclude that

Respondent committed ethical misconduct and we direct that Respondent receive a public reprimand.

Born in 1938, Respondent was admitted to practice law in Pennsylvania in1964 and has no history of discipline. In addition to a law practice, Respondent has been involved in real estate investments. In January 2008, Michael Riley contacted Respondent and asked him to review the legal work being performed by his current attorney, Donald Moser, in negotiations for the sale or liquidation of interests in a night club business which was subject to litigation and being adjudicated before a private mediator. Mr. Riley obtained Respondent's name from Mr. Riley's eye doctor, Casimir Czarnecki, who was also Respondent's business partner. Mr. Riley consulted with Respondent and requested that Respondent confirm that Mr. Moser was acting appropriately on Mr. Riley's behalf. On January 24, 2008, Respondent requested and Mr. Riley paid Respondent a flat fee of $1000.00 for Respondent's services. Respondent did not provide Mr. Riley with a written engagement letter.

Upon Respondent's review of Mr. Moser's efforts related to the sale of the business and the mediation proceeding, Respondent advised Mr. Riley that he believed Mr. Moser was doing an adequate job. Mr. Riley was satisfied with Respondent's conclusions and continued to use Mr. Moser to effectuate the eventual settlement.

As a result of the settlement, Mr. Riley received a check dated September 10, 2008, in the amount of $433,277.00. Mr. Riley sought advice from Dr. Czarnecki about investment opportunities, and Dr. Czarnecki suggested Mr. Riley consult with Respondent. Thereafter, Mr. Riley contacted Respondent and advised that he had received monies from the settlement and wanted to invest a portion of the proceeds in a business endeavor Respondent had with Dr. Czarnecki, known as Pennypack Properties, LLC. Respondent

and Mr. Riley discussed apportioning the settlement proceeds by investing a portion in Pennypack Properties through a limited liability company to be formed, known as TS Investments, LLC; depositing a portion in a bank account owned by TS Investments; purchasing a certificate of deposit; and, possibly investing the balance of the settlement proceeds in other real estate investments with Respondent.

With Mr. Riley's permission, on September 17, 2008, Respondent deposited Mr. Riley's settlement monies into a bank account maintained by Respondent at Bucks County Bank titled "Kashkashian & Associates 4 Escrow Account" ("K&A4 Account"). Mr. Riley understood and acknowledged the risks of investing monies when he signed a Member Share Agreement for obtaining an interest in Pennypack Properties.

Although Mr. Riley had contemplated investing additional monies from the settlement proceeds held in the K&A4 Account in another business venture, after a few weeks, Mr. Riley requested the return of his remaining funds in the amount of $108,277.00 held in the K&A4 Account. Respondent initially issued a check to Mr. Riley on October 31, 2008, but another check deposited in the K&A4 Account was returned for insufficient funds, causing Respondent's check to Mr. Riley to be dishonored. Upon being made aware of the dishonored check, on November 17, 2008, Respondent contacted Mr. Riley about the dishonored check and made arrangement to issue a replacement check. The $108,277.00 was subsequently returned to Mr. Riley.

Following the dishonored check, Mr. Riley requested that Mr. Moser review Mr. Riley's financial relationship with Respondent. Mr. Moser made repeated inquiries of Respondent regarding the status of Mr. Riley's investment and questioned when a return would occur. Mr. Riley and Respondent eventually litigated the issue, resulting in the settlement of a civil action in December 2014, wherein the parties agreed to allow

Respondent to repay Mr. Riley's investment when the property owned by Pennypack Properties was eventually sold.

Petitioner alleged that Respondent engaged in unethical conduct in relation to his representation of Mr. Riley. We view Respondent's interactions with Mr. Riley as two discrete events. In the first instance, Respondent represented Mr. Riley in the review of Mr. Moser's legal work regarding the nightclub business. Mr. Riley retained Respondent and paid him $1,000.00 for legal services. Respondent provided the legal services to Mr. Riley, but erred in not providing to Mr. Riley, a client whom he had not regularly represented, a written agreement setting forth the basis or rate of Respondent's fee.

In the second instance, upon the advice of Dr. Czarnecki, Mr. Riley met with Respondent to discuss investment opportunities. Upon review of the record, we conclude that Respondent did not represent Mr. Riley as his attorney when Mr. Riley executed the Member Share Agreement and invested monies in Pennypack Properties. The testimony of Mr. Riley is not credible that he sought out legal advice from Respondent after acquiring the settlement proceeds. Rather, as is evident from Mr. Riley's discussion with Dr. Czarnecki, Mr. Riley was interested in investment opportunities when he met with Respondent after Mr. Riley received the settlement funds in resolution of the nightclub business dispute. The record does not support the conclusion that Respondent's initial representation of Mr. Riley to review Mr. Moser's legal work, continued through the execution of the Member Share Agreement

The rules violations charged by Petitioner pertaining to Respondent's alleged representation of Mr. Riley in the Pennypack Properties business venture are dismissed as there was no attorney-client relationship between Respondent and Mr. Riley. However, we conclude that Respondent committed misconduct by commingling funds of Mr. Riley, a

third party, with his own funds in the K&A4 Account, although the evidence demonstrates that Respondent delivered the $108,277.00 to Mr. Riley when requested and Respondent took prompt steps to remedy payment when he learned of the overdraft.

In addition to his misconduct regarding Mr. Riley, Respondent failed to comply with requirements relating to his fiduciary duties and his annual attorney fee forms. The record demonstrates that from November 1, 1998 to February 28, 2011, Respondent maintained an Interest on Lawyers Trust Account ("IOLTA") at PNC Bank; however, he rarely used that account during that time period. From at least September 1, 2008 through all times relevant, Respondent held funds of clients and third persons in the K&A4 Account at Bucks County Bank, but he did not arrange for the bank to report overdrafts on the K&A4 Account to the Pennsylvania Lawyers Fund for Client Security. From September 9, 2008 to April 14, 2011, Respondent caused approximately twenty-eight overdrafts in the K&A4 Account, and from November 6, 2008 through September 29, 2011, Respondent made multiple deposits of his own personal funds into the K&A4 Account. In his Answer to Petition for Discipline and at the hearing on October 5, 2016, Respondent denied that he deposited client funds in the K&A4 Account; however, Respondent later admitted on cross-examination that he had deposited client funds into the K&A4 Account.

Although Respondent was required to list on his annual attorney fee forms all bank accounts or financial institutions in which he held funds of clients or third persons, he failed to list the K&A4 account on four annual fee forms between 2008 and 2012. In addition, Respondent falsely indicated on three of his annual attorney fee forms that he did not maintain an IOLTA account.

Respondent violated RPC 1.5 (b) by failing to provide Mr. Riley with a written fee agreement regarding Respondent's review of Mr. Moser's representation in the

business dispute. Respondent violated RPC 1.15(b) and (h) by holding client funds in the K&A4 Account, along with his own property and by failing to properly identify and safeguard client funds in such account. In addition to commingling his property with that of third parties, Respondent failed to safeguard the funds of third parties, resulting in the payment of $108,277.00 to Mr. Riley being dishonored. Respondent violated RPC 1.15(g) and Pa.R.D.E. 221(d) by failing to arrange for Bucks County Bank to give overdraft notification with respect to the K&A4 Account, a trust account, to the Pennsylvania Lawyers Fund for Client Security. Respondent violated Pa.R.D.E. 219(d)(1)(iii) by filing to list all bank accounts or financial institutions in which he held funds of a client or third person, subject to RPC 1.15, on his attorney annual fee forms. Respondent violated RPC 1.15(m) by failing to place certain qualified funds which were not fiduciary funds in an IOLTA account. Respondent violated RPC 8.1(a) by knowingly making false statements of material fact in his Answer to Petition for Discipline and during the hearing when he claimed he did not deposit client funds in the K&A4 Account, and Respondent violated RPC 8.4(c) by making misrepresentations regarding the use of the K&A4 Account.

As noted above, Respondent is nearly 80 years of age and has practiced law for more than 50 years without incident. These facts are appropriate to consider in mitigation. ***Office of Disciplinary Counsel v. Philip Valentino***, 730 A.2d 479, 483 (Pa. 1999). In aggravation, Respondent did not express remorse in the form of an apology or similar statement; however, upon our review of the record, we find that on several occasions, Respondent admitted he erred and committed wrongdoing in regard to the trust account and annual attorney fee form violations. In addition, Respondent indicated he has taken steps to prevent similar misconduct in the future.

Because discipline is imposed on a case-by-case basis, the Board must consider the totality of the facts presented, including any aggravating or mitigating factors. ***Id.*** at 1238. Despite the fact-intensive nature of this endeavor, we strive for consistency so that similar misconduct "is not punished in radically different ways." ***Office of Disciplinary Counsel v. Robert Lucarini***, 472 A.2d 186, 190 (Pa. 1983).

Herein, a public reprimand is consistent with discipline imposed on attorneys who have engaged in similar misconduct and who have similar mitigating factors. In the matter of ***Office of Disciplinary Counsel v. Elliott Tolan***, No. 200 DB 2015 (D. Bd. Order 12/30/2015), the respondent-attorney received a public reprimand for his misconduct, which included failing to have a written fee agreement, commingling client funds, and engaging in conduct involving dishonest conduct. This respondent-attorney had no prior record of discipline in a professional career spanning forty-eight years. In the matter of ***Office of Disciplinary Counsel v. Jack M. Bernard***, No. 52 DB 2015 (D. Bd. Order 4/27/2015), the respondent-attorney received a public reprimand and probation for one year for misconduct that included IOLTA account violations and commingling of client funds. The respondent-attorney had no prior record of discipline in a nearly forty year legal career.

In the matter of ***Office of Disciplinary Counsel v. David J. Selingo***, No. 45 DB 2015 (D. Bd. Order 4/10/ 2015), the respondent-attorney received a public reprimand for misconduct involving engaging in a business transaction with a client without appropriate safeguards, commingling client funds, depositing the respondent-attorney's own funds in a trust account, failing to maintain complete records of the receipt, maintenance and disposition of Rule 1.15 Funds and property for a period of five years after termination of the client-lawyer relationship or fiduciary relationship, and engaging in

dishonest conduct. The respondent-attorney had no prior record of professional discipline in a twenty year legal career.

In the matter of ***Office of Disciplinary Counsel v. Yvette Mary Rogers***, No. 184 DB 2014 (D. Bd. Order 12/17/2014), the respondent–attorney received a public reprimand for misconduct involving depositing unearned trust funds into a personal account and commingling client funds. This respondent-attorney had no record of prior discipline in a twenty-three year legal career. In the matter of ***Office of Disciplinary Counsel v. Michael Paul Petro***, No. 195 DB 2014 (D. Bd. Order 2/2/2016), the respondent-attorney received a public reprimand for misconduct that included IOLTA account trust violations and commingling of client funds. This respondent-attorney had no prior record of discipline in a twenty year legal career.

Finally, we note the recent matter of ***Office of Disciplinary Counsel v. Gordon Fisher***, No. 21 DB 2016 (D. Bd. Order 1/19/2017). Therein, the respondent-attorney's IOLTA account was deficient for periods of time over the course of eighteen months with regard to funds entrusted to him on behalf of an estate. The respondent-attorney made repeated distributions of entrusted funds to himself for fees, even after he had been paid all of the fees to which he was entitled under the fee agreement. The Board determined that the respondent-attorney's faulty bookkeeping methods contributed to the unintentional misconduct. The respondent-attorney cooperated with Office of Disciplinary Counsel and expressed genuine remorse. At the time of his misconduct, the respondent-attorney had practiced law for nearly forty years, but unlike the instant Respondent, had a prior record of discipline consisting of an informal admonition.

In light of the totality of the circumstances and the discipline imposed in prior similar cases, we conclude that a public reprimand is the appropriate discipline to address Respondent's misconduct.

DETERMINATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously determines that the Respondent, Arsen Kashkashian, shall receive a Public Reprimand. The expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By:_____
Brian J. Cali, Member

Date: 10/31/17

Member Cordisco recused.

BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL Petitioner	:	No. 16 DB 2016
v.	:	
	:	Attorney Registration No. 12779
ARSEN KASHKASHIAN, JR. Respondent	:	(Bucks County)

PUBLIC REPRIMAND

Arsen Kashkashian, Jr., you stand before the Disciplinary Board, your professional peers and members of the public for the imposition of a Public Reprimand. It is an unpleasant task to publicly reprimand one who has been granted the privilege of membership in the bar of this Commonwealth. Yet as repugnant as this task may be, it has been deemed necessary that you receive this public discipline.

Mr. Kashkashian, you are being reprimanded today in connection with your misconduct in two matters. In January 2008, you represented Michael Riley and reviewed a legal proceeding on his behalf. Although you had not previously represented Mr. Riley, you failed to provide him with a written engagement letter.

In the second matter, you maintained an account at Bucks County Bank known as the K&A4 Account, in which you held funds of clients and third parties; however, you did not maintain this account as an IOLTA account and did not arrange for the bank to report overdrafts on this account to the Pennsylvania Lawyers Fund for Client Security. From September 2008 to April 2011, you caused approximately 28 overdrafts in that account, and from November 2008 through September 2011, you made multiple deposits of your personal funds into the account, thereby impermissibly commingling your funds

with entrusted funds. During the course of the disciplinary proceedings, you misrepresented your actions concerning the use of this account.

Although you were required to list on your annual attorney fee forms all bank accounts or financial institutions in which you held funds of clients or third persons, you failed to list the Bucks County Bank account on four annual fee forms between 2008 and 2012. In addition, you falsely indicated on three of your annual attorney fee forms that you did not maintain an IOLTA account, when in fact you maintained an IOLTA account at PNC Bank during that time frame.

Your conduct in this matter has violated the following Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement:

1. RPC 1.5(b) – Failing to communicate the basis or rate of your fee in writing, within a reasonable time after commencing the representation, when you had not regularly represented the client.
2. RPC 1.15(b) – Failing to hold all Rule 1.15 Fund and property separate from your own property.
3. RPC 1.15(g) – Failing to identify an account as a trust account.
4. RPC 1.15(h) – Depositing your own funds into a trust account for purposes other than paying service charges on that account.
5. RPC 1.15(m) – Failing to place qualified funds in an IOLTA account.
6. RPC 8.1(a) – Knowingly making a false statement of material fact in connection with a disciplinary matter.
7. RPC 8.4(c) – Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

8. Pa.R.D.E. 219(d)(1)(iii) - Failing to list on your attorney annual fee forms all bank accounts or financial institutions in which you held funds of a client or third person, subject to RPC 1.15.
9. Pa.R.D.E. 221(d – Failing to arrange for Bucks County Bank to give overdraft notification with respect to the K&A4 Account to the Pennsylvania Lawyers Fund for Client Security.

We note that you have been admitted to practice law in the Commonwealth since 1964 and have never been the subject of professional discipline in any other matters.

Mr. Kashkashian, your conduct in this matter is now fully public. This Public Reprimand is a matter of public record.

As you stand before the Board today, we remind you that you have a continuing obligation to abide by the Rules of Professional Conduct and Rules of Disciplinary Enforcement. This Public Reprimand is proof that Pennsylvania lawyers will not be permitted to engage in conduct that falls below professional standards. Be mindful that any future dereliction will subject you to disciplinary action.

This Public Reprimand shall be posted on the Disciplinary Board's website at www.padisciplinaryboard.org.

Designated Member
The Disciplinary Board of the
Supreme Court of Pennsylvania

Administered by a designated panel of three Members of The Disciplinary Board of the Supreme Court of Pennsylvania, at Philadelphia, Pennsylvania, on January 18, 2018.

ACKNOWLEDGMENT

The undersigned, Respondent in the above proceeding, herewith acknowledges that the above Public Reprimand was administered in his presence and in the presence of the designated panel of The Disciplinary Board at 1601 Market Street, Suite 3320, Philadelphia, Pennsylvania, on January 18, 2018.

Arsen Kashkashian, Jr.