

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1711 Disciplinary Docket No. 3
Petitioner :
 :
 :
v. : No. 185 DB 2010
 :
 :
MICHAEL J. MARRAZZO, : Attorney Registration No. 37151
Respondent : (Lackawanna County)

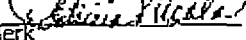
ORDER

PER CURIAM:

AND NOW, this 4th day of May, 2011, there having been filed with this Court by Michael J. Marrazzo his verified Statement of Resignation dated January 31, 2011, stating that he desires to resign from the Bar of the Commonwealth of Pennsylvania in accordance with the provisions of Rule 215, Pa.R.D.E., it is

ORDERED that the resignation of Michael J. Marrazzo is accepted; he is disbarred on consent from the Bar of the Commonwealth of Pennsylvania; and he shall comply with the provisions of Rule 217, Pa.R.D.E. Respondent shall pay costs, if any, to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy Patricia Nicola
As Of 5/4/2011

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

**BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA**

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|--------------------------------|---|---------------------------------|
| OFFICE OF DISCIPLINARY COUNSEL | : | No. 185 DB 2010 |
| Petitioner | : | |
| | : | |
| v. | : | Attorney Registration No. 37151 |
| | : | |
| MICHAEL J. MARRAZZO | : | |
| Respondent | : | (Lackawanna County) |

RESIGNATION BY RESPONDENT

Pursuant to Rule 215
of the Pennsylvania Rules of Disciplinary Enforcement

BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 185 DB 2010
: :
MICHAEL J. MARRAZZO : :
: :
: :
: :
: Attorney Registration No. 37151
: (Lackawanna County)

RESIGNATION
UNDER PENNSYLVANIA RULE OF DISCIPLINARY ENFORCEMENT 215

Michael J. Marrazzo hereby tenders his unconditional resignation from the practice of law in the Commonwealth of Pennsylvania in conformity with Pa.R.D.E. 215 and further states as follows:

1. He was admitted to the bar of the Commonwealth of Pennsylvania on or about November 1, 1982. His attorney identification number is 37151.
2. He desires to submit his resignation as a member of the bar.
3. His resignation is freely and voluntarily tendered; he is not being subjected to coercion or duress and he is fully aware of the implications of submitting this resignation.
4. He is aware that disciplinary proceedings docketed at No. 185 DB 2010 have been instituted against him as a result of the two complaints filed in disciplinary matters C3-09-002 and C3-09-117 that led to the filing of a Petition for Discipline against him.
5. He acknowledges that the material facts upon which the allegations in the Petition for Discipline are based as contained in Exhibit "A" are true.

6. He submits the within resignation because he knows that he could not successfully defend himself against the charges of professional misconduct that have been brought against him.
7. He is fully aware that the within resignation statement is irrevocable and that he can only apply for reinstatement to the practice of law pursuant to the provisions of Pa. R.D.E 218.
8. He acknowledges that he is fully aware of his right to consult and employ counsel to represent him in the instant proceeding. He has retained, consulted with and acted upon the advice of counsel in connection with his decision to execute the within resignation.
9. It is understood that the statements made herein are subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Signed this *31st* day of *JANUARY*, 2011


Michael J. Marrazzo
Respondent
Attorney Registration No. 37151

Witness: 

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 185 DB 2010
Petitioner :

v. :

MICHAEL J. MARRAZZO, :

Respondent : (Lackawanna County)

: Attorney Registration No. 37151

PETITION FOR DISCIPLINE

Petitioner, Office of Disciplinary Counsel, by Paul J. Killion, Esquire, Chief Disciplinary Counsel, and by Bruce H. Bikin, Esquire, Disciplinary Counsel, files the within Petition for Discipline and charges Respondent, Michael J. Marrazzo, with professional misconduct in violation of the Rules of Professional Conduct ("RPC") as follows:

1. Petitioner, whose principal office is located at the Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereinafter "Pa.R.D.E."), with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

— EXHIBIT "A" —

FILED

SEP 23 2010

Office of the Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

2. Respondent, Michael J. Marrazzo, was born in 1950, was admitted to practice law in the Commonwealth on November 1, 1982, maintains his office at 410 Jefferson Avenue, Scranton, Pennsylvania, and is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

COUNT I

Susan Keller Matter

3. Albina Martinell died testate on August 11, 2003. Pursuant to the terms of the will, Respondent was named executor of her estate. Further, Respondent was named Trustee for Ms. Martinell's daughter Marie. The funds placed in trust for Marie were to be used "*for the welfare of my daughter Marie Martinell.*" The will stated Respondent, as Trustee for Marie, was "*entitled to a fair and reasonable compensation for time spent administering said trust of funds.*"

4. On or about August 27, 2003, Respondent filed a Petition for Grant of Letters with the Register of Wills of Lackawanna County and Letters Testamentary were granted to him.

The Administration of the Estate:

5. Ms. Martinell's will provided, *inter alia*, that Susan E. Keller, her daughter, would receive a 25% (twenty-five per cent) share of the estate, Harold Rabiega would receive a 25% (twenty-five per cent) share of the estate and that her daughter, Marie

Martinell would receive a 50% (fifty per cent) share of the estate and that such money would be placed in Trust. There were other specific property bequests to Christopher Keller and Harold Ra-biega.

6. Subsequent to Ms. Martinell's death, Respondent opened an estate account at Old Forge Bank, account number 1172989601.

7. Respondent filed a Pennsylvania Inheritance Tax return (REV- 1500) on December 31, 2003. In that return Respondent de-clared the net estate assets were \$115,018.74. He has not filed any accounting or status reports since 2004.

8. Respondent included the following assets as a part of the estate total in the Inheritance Tax Return:

- (a) Real Estate located at 609-611 Main Street, Old Forge, PA., valued at \$60,000 with gross proceeds to the estate of \$45,997.16 [hereafter "Real Estate Proceeds"];
- (b) Janney Montgomery Scott Account No. SC07-5560-4692 valued at \$18,427.50. The gross proceeds to the estate from this account were \$18,499.65 [hereafter "Scott Proceeds"];
- (c) PNC Investments Account No. 60841178 which held a Transamerica annuity for Albina Martinell valued at \$49,227.47. The gross proceeds from this account were \$50,644.78 [hereafter "PNC Investment Pro-

ceeds”];

- (d) Old Forge Bank Account No. 1813203825 that provided gross proceeds to the estate of \$1,009.63 [hereafter “Old Forge Proceeds”];
- (e) M&T Bank Account No. 15004194281728 valued at \$1,414.78 that provided gross receipts to the estate of \$1,415.01 [hereafter “M&T Proceeds”];
- (f) John Hancock Account No. 160154747 valued at \$8,124.00 that provided gross receipts to the estate of \$9,356.67 [hereafter “Hancock Proceeds”];
- (g) 1987 Mazda valued at \$1,500.00;
- (h) One third (1/3) interest in PNC investment Account No. 0169244667. Respondent valued the entire account at \$12,748.99 and the funds provided to the estate were \$4,207.17 [hereafter “PNC Joint Proceeds I”]; and
- (i) One third (1/3) interest in PNC investment Account No. 9009518982. Respondent valued the entire account at \$51.85 and the funds provided to the estate were \$51.85 [hereafter “PNC Joint Proceeds II”].

9. The estate was entitled to certain property that came to Albina Martinell from her brother, Joseph Connors, and was identified on Pennsylvania’s Unclaimed Property website at ID. No.

8280936. Though this property was repeatedly identified to Respondent by Ms. Keller as properly belonging to the Estate, Respondent failed or refused to include this property of indeterminate value in the Estate, or take any steps to claim the property.

10. Respondent deposited the above-named liquidated assets into bank accounts as follows:

(a) Respondent deposited the Real Estate Proceeds into the Estate account;

(b) Respondent deposited the Scott Proceeds into Respondent's IOLTA account, rather than the Estate account and then drafted a check from Respondent's IOLTA account in the amount of \$5,000.00 and deposited it in the Estate account on November 18, 2003.

Subsequently, on July 9, 2004, Respondent drafted a check from Respondent's IOLTA account in the amount of \$5,060.34 and deposited it in the Estate account. The balance of \$8,439.31 was retained in Respondent's IOLTA account;

(c) Respondent never collected the PNC Investment Proceeds because they were distributed directly to the beneficiaries from Transamerica and were never part of the Estate, even though Respondent included them in the Inheritance Tax Return;

- (d) Respondent deposited the Old Forge Proceeds into the Estate account;
- (e) Respondent collected the M&T Proceeds but never deposited them into the Estate account or Respondent's IOLTA account;
- (f) Respondent deposited the Hancock Proceeds into the Estate account on July 29, 2009;
- (g) The Mazda was distributed to Martinell's grandson, Christopher Keller;
- (h) Respondent collected the PNC Joint Proceeds I, but never deposited them into the Estate Account or Respondent's IOLTA account; and
- (i) Respondent collected the entire amount of the PNC Joint Proceeds II and deposited them into the estate account on January 2, 2004.

11. On the Inheritance Tax return, Respondent included an Executor's fee of \$8,050.00 and an attorney's fee of \$8,050.00. To date, Respondent has probated the Will of Albina Martinell, filed the Inheritance Tax Return on December 31, 2003, and handled the sale of the primary residence of Albina Martinell. For this work on the Estate, Respondent has paid himself \$38,774.97 in fees. Respondent has not filed any supplemental inheritance tax return clarifying or correcting the fees he has charged the Estate or corrected the total value of the Estate.

12. The Hancock Proceeds have never been distributed to any of the beneficiaries.

13. Based upon the Inheritance Tax Return prepared and filed by Respondent, the Estate should have distributed to Susan Keller approximately \$28,750.00 as her share of the estate. No such amount has ever been set aside or paid to Susan Keller from the Estate of Albina Martinell.

14. Susan Keller has received two distributions from the Estate. One distribution was in the amount of \$10,000.00 in 2004 and one distribution of \$1,500.00 in 2005.

Estate Money Management:

15. Between December, 2003 and July, 2005, Respondent wrote 39 separate checks from the estate account payable to himself, in addition to the \$8,439.31 from the Scott Proceeds. After February, 2004, Respondent performed no work on behalf of the Estate.

16. Among the checks Respondent wrote on the Estate account for his benefit was a check to "Mr. Z's" a restaurant in the amount of \$41.77 on December 24, 2003.

17. Also among the checks Respondent wrote on the Estate account for his benefit was a check to "Lowe's," a large chain hardware and construction material store, in the amount of \$43.89 on December 24, 2003.

18. Also among the checks Respondent wrote on the Estate account was a check marked "MJM fee/mortgage" in the amount of

\$900.00 on December 24, 2003, payable to Old Forge Bank.

19. On April 2, 2004, Janney Montgomery Scott paid Albina Martinell's estate a dividend of \$46.33. Respondent never deposited that check into the estate account or his IOLTA account.

20. On July 2, 2004, Janney Montgomery Scott paid Albina Martinell's estate a dividend of \$46.33. Respondent never deposited that check into the estate account or his IOLTA account.

21. On August 31, 2007, Respondent first advertised the death of Albina Martinell in the *Triboro Banner*. The Estate account was empty at the time and Respondent was required to deposit \$175.00 of his own funds to pay for the advertisement. Albina Martinell had been deceased for over four (4) years at the time Respondent published the notice of her death.

22. Throughout the administration of the Estate of Albina Martinell, Respondent failed to reconcile the check register against the actual account statements, made numerous incorrect entries, failed to make entries, failed to record bank fees and did not keep a running balance.

23. Respondent has not filed a petition with the Court seeking approval of any distributions to beneficiaries or fees to counsel. Further, Respondent has failed to file any of the status reports required by Pa. O.C.R 6.12 (a) or (b).

24. Ms. Keller has repeatedly sought an accounting from Respondent of the funds currently in the Estate of Albina I. Marti-

nell. Respondent has failed or refused to present an accounting of the funds currently in the Estate of Albina I. Martinell and/or any funds due to Ms. Keller.

25. Ms. Keller has repeatedly sought the completion and finalization of the Estate of Albina I. Martinell. Respondent has failed to complete the administration of the Estate of Albina I. Martinell 5 and ½ years after being raised.

The Administration of the Funds held in Trust
for Marie Martinell:

26. Marie Martinell is a mentally disabled, special-needs adult. Pursuant to the Will of Albina Martinell, Marie was to receive half (50%) of the Estate. Based upon the Inheritance Tax Return prepared and filed by Respondent, the Estate should have provided Marie with approximately \$57,500.00 in her separate account. No such amount has ever been set aside or paid to any account being held for the benefit of Marie Martinell.

27. Marie Martinell has received various distributions from the Estate as follows: Marie received a total of \$500.00 in 2003, a total of \$1,400.00 in 2004 and a total of \$1,350.00 in 2005.

28. On September 19, 2003, Respondent made a cash deposit into Marie Martinell's bank account no. 1644 at PNC Bank. The source of these funds appears to be unknown.

29. On June 23, 2004, Respondent deposited \$25,280.40 into the separate trust account set up for Marie Martinell. This represented her share of the PNC Investment proceeds which did not pass

through the Estate. In December, 2004, Respondent began paying himself fees from this account. In total, he paid himself \$20,295.00 in fees from the trust account of Marie Martinell. This was in addition to the \$38,774.97 in fees Respondent took from the Estate.

30. On March 20, 2008, Respondent ceased making rent payments for Marie Martinell by check. At that time he began making cash withdrawals from Marie's trust account. However, these cash withdrawals were not coordinated with regular, monthly payments of rent on behalf of Marie. These cash withdrawals totaled \$3,895.00.

31. During the period between August, 2005 and January, 2008, Respondent deposited funds in the total amount of \$2,835.00 from his own funds into the trust account of Marie Martinell.

32. Although Respondent was entitled to "*fair and reasonable compensation for the time spent administering*" the Trust of funds held for Marie Martinell, he has failed to keep any records of time he actually spent performing any duties on behalf of Marie Martinell.

COUNT II

Jean L. Pantages-Denicola Matter

33. Jean L. Pantages-Denicola asked Respondent to represent her in her divorce on May 1, 2007. She paid him \$3,500.00 in cash as a retainer, at his request.

34. Respondent agreed to represent Ms. Pantages-Denicola. He

had not previously represented her. Respondent did not provide her with a written fee agreement. Respondent did not provide her with any information concerning his fees, hourly rates, costs and expenses or how he would be billing her generally.

35. Respondent did not tell Ms. Pantages-Denicola what he could do for her, consult with her concerning her goals and objectives or present her with an outline of the possible results she could expect.

36. Ms. Pantages-Denicola turned over to Respondent an extensive file of tax returns, documents and other papers that Respondent had requested as necessary and supportive of her divorce litigation.

37. Ms. Pantages-Denicola repeatedly asked Respondent for updates concerning her divorce matter. Respondent did not supply her with any information as to the status of her divorce. He did not supply her with copies of any pleadings and has never supplied her with an itemized bill of charges that would identify any work that he has allegedly done.

38. Subsequently, Ms. Pantages-Denicola hired another attorney to represent her in her divorce and asked Respondent to return the file of tax returns, documents and other papers she had given to him. Respondent subsequently forwarded some of the documents to Ms. Pantages-Denicola's new attorney. Respondent improperly retained, misplaced or lost the balance of Ms. Pantages-Denicola's

tax returns, documents and other papers.

39. Ms. Pantages-Denicola requested a refund of the entire retainer fee of \$3,500.00 that she paid Respondent. Respondent refunded \$2,500.00 of Ms. Pantages-Denicola's money and has not supplied her with an itemized bill of the services he allegedly performed regarding her divorce.

40. By his conduct as alleged in Paragraphs 3 through 39 above, Respondent violated the following Rules of Professional Conduct:

- a. RPC 1.1, which states that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation necessary for the representation;
- b. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;
- c. RPC 1.4(a)(2), which states that a lawyer shall reasonably consult with a client about the means by which the client's objectives are to be accomplished;
- d. RPC 1.4(a)(3), which states that a lawyer shall keep a client reasonably informed about the status of a matter;
- e. RPC 1.4(a)(4), which states that a lawyer shall promptly comply with reasonable requests for information;
- f. RPC 1.4(b), which states that a lawyer shall explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation;
- g. RPC 1.5(a), which states that a lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee;

- h. former 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 the lawyer-client relationship separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded. Complete records of the receipt, maintenance and disposition of such property shall be preserved for a period of five years after termination of the lawyer-client relationship or after distribution of the property;
- i. RPC 1.15(b), which states that a lawyer shall hold Rule 1.15 funds separate from the lawyer's own property;
- j. RPC 1.15(e), which states that a lawyer shall promptly deliver to the client any property that the client is entitled to receive;
- k. RPC 1.16(d), which states that upon termination of a representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests; and
- l. RPC 8.4(c), which holds that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

WHEREFORE, Petitioner prays that your Honorable Board appoint, pursuant to Rule 205, Pa.R.D.E., a Hearing Committee to hear testimony and receive evidence in support of the foregoing charges and upon completion of said hearing to make such findings of fact, conclusions of law, and recommendations for disciplinary action as it may deem appropriate.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

Paul J. Killion
Chief Disciplinary Counsel

By



Bruce H. Bikin
Disciplinary Counsel
Attorney Registration No. 18522

820 Adams Avenue, Suite 170
Trooper, PA 19403
(610) 650-8210

VERIFIED STATEMENT

I, Bruce H. Bikin, Disciplinary Counsel, state under the penalties provided in 18 Pa. C. S. §4904 (unsworn falsification to authorities) that:

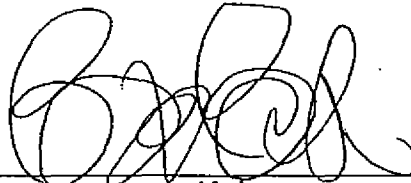
I am a Disciplinary Counsel of the Disciplinary Board of the Supreme Court of Pennsylvania assigned to prosecute this matter pursuant to the Pennsylvania Rules of Disciplinary Enforcement;

I am authorized to make this verified statement; and

The facts contained in the attached Petition for Discipline are true and correct to the best of my knowledge, information and belief.

Sept 20, 2010

Date



Bruce H. Bikin
Disciplinary Counsel