



Office of Attorney Ethics
 Supreme Court of New Jersey
 P.O. Box 963
 Trenton, NJ 08625
 (609) 530-4008
 Trial Counsel: Lee A. Gronikowski

OFFICE OF ATTORNEY ETHICS	:	
	:	DOCKET NO: XIV-99-051E
Complainant,	:	
	:	
vs.	:	DISCIPLINARY ACTION
	:	
GEORGE J. COTZ, ESQ.	:	FORMAL COMPLAINT
	:	Complex Misconduct
Respondent,	:	

Complainant, Office of Attorney Ethics of the Supreme Court of New Jersey, P.O. Box 963, Trenton, New Jersey 08625, by way of formal complaint against respondent, George J. Cotz, Esq., says that:

GENERAL ALLEGATIONS

1. George I. Cotz ("respondent") was admitted to the practice of law in this state in 1974.

2. Respondent maintained an office for the practice of law at 185 Arch Street, Ramsey, Bergen County, New Jersey 07446 at all times relevant to the allegations in this complaint.

3. Respondent maintained the following bank accounts in connection with his legal practice at all times relevant to the allegations in this complaint:

- a. Fleet Bank
 Attorney Trust Account No. 4060-004310
- b. Hudson United Bank

Attorney Business Account No. 00340 12358

- c. Valley National Bank
Attorney Business Account No. 82219176

4. This case began on January 20, 1999, when the OAE was notified that respondent had overdrawn his trust account at Fleet Bank when a \$75,000.00 check was presented against insufficient funds. The OAE's investigation revealed that respondent knowingly and wrongfully misappropriated client trust funds twice in connection with his attempt to purchase a new home.

FIRST COUNT

(Knowing Misappropriation of Trust Funds)

Respondent Borrows \$75 .000.00 From a Friend.
Donald Reeder, To Purchase a New Home

1. On or about August 11, 1998, respondent borrowed \$75,000.00 from a friend, Donald Reeder, to purchase a new home.
2. Respondent deposited the Reeder loan into his attorney business account.
3. The purchase of the new home fell through in August 1998 before respondent made a down payment.
4. Although the purchase fell through, respondent drew down on the Reeder loan to the extent of \$12,000.00 to pay several personal obligations unrelated to a real estate purchase.
5. On or about September 28, 1998, respondent entered into a contract to purchase another new home.

6. Respondent issued a check (no. 200) for \$63,000.00 against his attorney business account on September 28, 1998 for the down payment on the new home.

Respondent's First Misappropriation

7. The available balance in respondent's attorney business account on September 28, 1998 was only \$37,444.47, or \$25,555.53 too short to cover the \$63,000.00 check respondent issued for the down payment on the new home.

8. To cover this shortage, respondent drew his attorney trust check (no. 1807) for \$28,000.00 against funds he was holding for a client, Frank Gallo, and deposited it into his attorney business account, increasing the balance in the attorney business account to \$65,444.47, which enabled the \$63,000.00 check to clear. According to respondent, Gallo authorized respondent to borrow the \$28,000.00 as well as other sums (See Second Count).

9. When respondent's trust account check for \$28,000.00 cleared the bank on September 30, 1998, it reduced the available balance in respondent's trust account to \$14,342.04, yet he should have been holding \$32,408.37 in his trust account on behalf of the following clients: Gallo (\$430.50); Adams (\$12,780.00); Whippany (\$13,920.00); Lesko (\$2,200.00); Ritchie (\$3,000.00); and (\$77.87) for himself. Thus, respondent's reconciled attorney trust account was short (\$18,766.33) and he had knowingly invaded client trust funds without the clients' knowledge or consent.

Reeder Requests the Return of the Loan

10. On or about October 1, 1998, Reeder told respondent, in essence, that he was having second thoughts about loaning respondent the \$75,000.00 and asked respondent to return it to him until the second house closed.

11. According to respondent's statements to the OAE during a demand audit on March 16, 1999, he intended to preserve the remaining \$63,000.00 from Reeder's original \$75,000.00 loan by placing the funds into his attorney trust account.

12. However, on October 1, 1998, even though he had already disbursed the Reeder funds, respondent issued a check (no. 202) on his attorney business account for \$63,000.00 and deposited it into his attorney trust account to preserve it for Reeder, which respondent knew or should have known would cause his business account check no. 200 for \$63,000.00, the down payment on the house, to bounce.

Respondent's Second Misappropriation

13. Although respondent did not have enough funds available in his attorney business account to repay Reeder because he used the \$12,000.00 for personal expenses, respondent nevertheless issued Reeder a check (no. 1809) against his attorney trust account for \$75,000.00 on October 2, 1998.

14. When respondent issued his trust account check to Reeder for \$75,000.00, he created an overall shortage of (\$30,766.33) in his attorney trust account.

15. Respondent's attorney trust account check for \$75,000.00, which was issued to Reeder on October 2, 1998, bounced on October 5, 1998 and created an overdraft of (\$1,807.96) in the trust account, which Fleet Bank reported to the OAE on January 20, 1999¹.

16. When Reeder told respondent that the \$75,000.00 check bounced, respondent drew a cashier's check against his attorney trust account for \$65,000.00 on October 7, 1998 as a partial payment to Reeder, two thousand dollars more than the \$63,000.00 of Reeder's funds that respondent had placed in his attorney trust account on October 1, 1998. In each of these instances, check #1809 and the cashier's check invaded client trust funds without his clients' knowledge or consent.

Respondent's Claim In Defense is Erroneous

17. Respondent told the OAE in a letter dated February 19, 1999, in essence, that he believed that he had accumulated enough fees in his attorney trust account to cover the cashier's check issued to Reeder on October 7, 1998.

18. Review of respondent's own records by the OAE revealed that respondent had only \$77.87 in personal funds in the trust account in October 1998 at the time the cashier's check was issued to Reeder.

19. Moreover, further review of respondent's own records by the OAE revealed that respondent had only \$4,870.00 in fees to his

¹ The lapse of time between the actual overdraft and Fleet Bank's notice to the OAE was caused by a bank error.

potential credit in his trust account as of October 7, 1998, so respondent's claim that he relied on accumulated fees in his trust account to cover Reeder's cashier's check is unsupported by respondent's own records.

20. When respondent issued the \$65,000.00 cashier's check to Reeder on October 7, 1998, he reduced the balance in his attorney trust account to \$1,877.04 when he should have been holding at least \$18,710.50 for several clients as follows:

Gallo (\$430.50)

Adams (\$13,080.00)

Lesko (\$2,200.00)

Ritchie (\$3,000.00)

21. Respondent used his clients' trust money without their knowledge or consent.

22. Respondent's misconduct is a violation of RPCs 1.15(a) and 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), or knowing misappropriation of client trust funds, and the principles of In re Wilson, 81 N.J. 451 (1979).

SECOND COUNT

(Conflict of Interest - Prohibited Transactions)

1. Respondent, according to admissions made to the OAE, borrowed trust funds from his clients, Frank Gallo, Peter Hadjiyerou, Jack Levin, and Ira Zalel during 1998 and 1999.

2. Respondent, according to admissions made to the OAE during the demand audit on March 16, 1999, in connection with these loans:

- a. failed to document the loans;
 - b. failed to advise the clients of the desirability of seeking independent counsel of the client's choice regarding the transactions; and
 - c. failed to obtain the client's consent to the transactions in writing.
3. Respondent's misconduct is a violation of RPC 1.8(a)

(conflict of interest prohibited transactions).

THIRD COUNT

(Failure to Safeguard Funds - Violation of Escrow Agreement)

1. Sometime during 1990, respondent undertook the representation of Jack Levin in a foreclosure matter against Dr. Bradford C. Liva.
2. Prior to trial, a settlement of \$100,000.00 was reached.
3. On December 12, 1991, Liva's attorney issued a trust account check (no. 1390) for \$90,000.00, a portion of the settlement, to respondent's law firm at the time, Weber, Muth & Weber, and the funds were deposited into the firm's trust account. (The remaining \$10,000.00 was to be negotiated directly between Liva and Levin and was not to impact the \$90,000.00 partial payment.)
4. Respondent was to hold the \$90,000.00 in trust until Liva's attorney received a discharge of mortgage.
5. Respondent disbursed substantially all of the escrowed funds in violation of the terms of the escrow.
6. Respondent disbursed the escrowed funds to his firm to cover fees and expenses, disbursed funds to various payees at the direction of his client for his client's own obligations, and disbursed funds

without verifying that conditions which had to exist prior to their disbursement had been met, all in violation of the escrow conditions.

7. Respondent's misconduct is a violation of RPCs 1.15 (failure to safeguard trust funds) and 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and In re Susser, 152 N.J. 37 (1997).

FOURTH COUNT

(Recordkeeping Violations)

1. The OAE conducted a random audit of respondent's attorney trust and business accounts on August 25, 1995.

2. Deficiencies were found during the random audit, and respondent certified to the OAE by correspondence dated April 15, 1996 and April 24, 1996 that he had corrected all deficiencies.

3. In response to the overdraft in respondent's attorney trust account at Fleet Bank, the event which triggered the instant case, a demand audit of respondent's attorney books and records was conducted on March 16, 1999.

4. The March 16, 1999 demand audit revealed that respondent's attorney recordkeeping was deficient in that:

- a. a running balance was not maintained in the trust account checkbook;
- b. client trust ledger cards were not fully descriptive;
- c. excess personal funds remained in the trust account;
- d. the trust account designation was improper;
- e. a trust receipts book was not maintained;
- f. a trust disbursements book was not maintained;

- g. three-way reconciliations of the attorney trust account were not maintained;
- h. the attorney business accounts receipts journal was not fully descriptive; and
- i. earned legal fees were not deposited into the attorney trust account.

5. The deficiencies enumerated in paragraph 4 (a) through (i) existed at the time of the random audit in August 1995, and respondent subsequently certified to the OAE that he had corrected those deficiencies.

6. Moreover, respondent admitted during the demand audit on March 16, 1999 that: a) he often cashed trust account checks to himself as fees rather than deposit them into his attorney business account; and b) he deposited funds unrelated to the practice of law into his attorney trust account.

7. Respondent's misconduct is a violation of RPC 1.15(d) and R.1:21-6 (willful failure to maintain required trust and business account records).

WHEREFORE, respondent should be publicly disciplined.

OFFICE OF ATTORNEY ETHICS

By: /s/ David E. Johnson, Jr.
Director

Dated: January 25, 2002

George J. Cotz
Box 396
Ramsey, NJ 07446
(201) 327-0900
(201) 327-0019 (FAX)
Respondent *Pro Se*

OFFICE OF ATTORNEY ETHICS	:	
	:	DOCKET NO: XIV-99-051E
Complainant,	:	
	:	
vs.	:	DISCIPLINARY ACTION
	:	
GEORGE J. COTZ, ESQ.	:	ANSWER
	:	
Respondent,	:	

Respondent, by way of answer to the Complaint, says:

1. He admits the General Allegations, paragraphs 1 to 4.

FIRST COUNT

1. He admits the allegations of Paragraphs 1 to 6, except he denies receiving the Reeder loan on August 11, but believes that it was earlier; and believes that the portion of the Reeder loan used for other purposes was more than \$12,000.00.

2. He admits the allegations of Paragraphs 7 and 8.

3. He admits the allegations of Paragraph 9, but denies that he knowingly invaded client funds. He asserts that he believed that a substantial portion of the Trust Fund balance represented accumulated fees.

4. He admits the allegations of paragraphs 10 through 17.

5. He neither admits nor denies the allegations of Paragraphs 18 and 19.

6. He admits the allegations of Paragraphs 20 and 21, but subject to the Statement in Defense.

7. He denies the allegations of Paragraph 22.

SECOND COUNT

1. He admits the allegations of Paragraph 1, except he denies borrowing from Jack Levin.

2. He admits the allegations of Paragraph 2, except that the Zalel loan was documented.

3. He admits the allegations of Paragraph 3.

THIRD COUNT

1. He admits the allegations of Paragraphs 1 to 6, subject to his Statement in Defense.

2. He denies the allegations of Paragraph 7.

FOURTH COUNT

1. He admits the allegations of Paragraphs 1 to 3.

2. He admits the allegation of Paragraph 4, except he denies 4b, 4d, 4h.

3. He admits the allegations of Paragraph 5, subject to his Statement in Defense.

4. He admits the allegations of Paragraph 6a, but denies the allegations of Paragraph 6b.

5. He denies the allegations of paragraph 7.

STATEMENT IN DEFENSE- COUNT ONE

1. I believed that I had sufficient funds in my Trust Account to cover all clients funds in late September, 1999 when I drew out \$28,000.00 of Frank Gallo's funds, and deposited that to my business account to cover the deposit on my real estate contract. This belief may have been erroneous, due to poor bookkeeping, but it was sincerely held.

2. This period of time was very stressful for me. I did not truly believe that I could afford the house which my wife and I were buying, but for personal reasons felt that I had to proceed with it. I was torn between fear of the huge financial obligation I was taking on, and fear of family problems if I didn't. I didn't know how to deal with these stresses, and became more confused and depressed with each passing day. I had no one to whom I could talk to try to work things out.

3. When Mr. Reeder asked for return of his money a day or two later, I panicked. I couldn't face telling him that I had already used it for a deposit, and that I had used some of it to pay some other personal bills, and even without the deposit I couldn't give it to him. I knew very well that I didn't have \$75,000.00 in my Trust Account, but I gave him a Trust check in that amount anyhow, knowing that it could possibly not clear, and that no client's funds would be invaded.

4. I knew, when I gave him that check that would bounce, that I was only multiplying my problems. I was on edge every day, waiting to

hear from him. When he learned that the check I gave him had bounced, he called, putting me into even more of a panic. It was at that point that I stopped payment on the deposit check, and drew the money out of my business account and put it in my Trust Account. I truly believed that I had accumulated several thousand dollars in fees there, so with the \$63,000.00 transfer, I could give Mr. Reeder \$65,000.00, which I did.

5. Putting a stop on the deposit check caused a huge uproar. At this point, I knew that I had not handled my Trust Account properly, although I did not think I had used any client's funds, and I certainly had let Mr. Reeder down in our transaction. Having seen many articles in the Law Journal over the years about lawyers being disbarred and prosecuted for Trust Account violations, I imagined the worst about what would happen to me; coupled with the reaction I anticipated from my wife (who had no idea any of this was going on) when she learned that I had cancelled our contract, I felt hopeless and that my marriage and my professional career were destroyed, and that my family would be disgraced. Suicide seemed a very attractive solution, but this thought also scared me.

6. With hindsight, I realize that my conduct in late September to early October, 1999 was irrational. I acted without thought or plan, and without realizing the consequences or significance of my behavior. For several days, or more, I was so distraught that I feared that I would kill myself. Eventually, I went to my local hospital, Good Samaritan, for help. I saw one or more psychiatrists over several

hours. They then committed me, against my will, for 72 hours. After that, I was then released on a prescription, halcyon, for two months coupled with extensive therapy.

STATEMENT IN DEFENSE- THIRD COUNT

1. The claims regarding the Levin escrow were resolved in my favor by the District II Ethics Committee in 1994 or 1995. That body determined that my conduct was perhaps negligent (and I did make full restitution, some \$45,000.00, to Mr. Hubin) but not unethical.

2. I did not violate the escrow by disbursing funds to my firm for fees, or to third-party creditors of Mr. Levin. There was no obligation to hold the \$90,000.00 in full until a discharge was prepared, as all parties acknowledged that the \$10,000.00 balance of the settlement might be delayed for quite a while. Rather, I was obligated to hold back enough (\$45,000.00 or \$40,000.00) to satisfy Mr. Hubin's interest in the mortgage.

3. Levin was the holder of record of the mortgage. It came out in discovery that he had assigned the mortgage (only by delivery) to Hubin as collateral for a loan of \$30,000.00. All parties agreed that Hubin was entitled to \$30,000.00, plus several years interest, out of the settlement.

4. Levin had been a client of my firm since I joined it in 1972. We also knew Hubin, and I was well aware that Levin and Hubin were sometimes partners in real estate deals, and that Levin often borrowed from Hubin. I had no prior knowledge of this loan, but I was not surprised when I heard of it. After we collected the \$90,000.00

settlement, Levin wanted to lend it to another friend of his, a Dr. Altai. (Dr. Altai had performed a triple bypass on Levin, and Levin believed that he owed his life to him. Altai was struggling to buy a big house, and Levin was eager to help him). Levin was talking repeatedly to Hubin to use the money that he (Levin) was now about to repay to make a loan to Altai. This went on for a number of weeks, while I let the money sit in the Trust Account.

5. Finally, on January 9 or 10, the day before I was to get married (which Levin knew about, as he was invited) Levin approached me and told me that Hubin had agreed. I knew that such a transaction was entirely consistent with the past history between Hubin and Levin, who often did business very informally, and I foolishly accepted Levin's word for their arrangement. I was certainly not focused on legal issues that day, and released the funds in a check drawn to Dr. Altai. I learned some weeks later that Hubin had never agreed to this, and his complaint and lawsuit followed. I had known Levin for nearly twenty years, and always found him to be completely honest with me before this. Because of this, I trusted him and acted accordingly. I certainly did not gain anything from this, nor did my firm, or even Levin; only Dr. Altai (who eventually lost the house in foreclosure) gained in any way.

March 4, 2002

/s/ George J. Cotz

VERIFICATION

STATE OF NEW JERSEY

COUNTY OF BERGEN

George J. Cotz deposes and says:

I am the Respondent named in this action. The foregoing Answer is true to my personal knowledge.

/s/ George J. Cotz

Sworn and subscribed to
before me this 25th day
of March, 2002

/s/ SHELLEY BERGER

A Notary Public of New Jersey

My Commission Expires Aug. 24, 2003

SUPREME COURT OF NEW JERSEY

IT IS ORDERED that MELINDA L. McALLISTER, ESQUIRE, having given his consent, is hereby appointed as a compensated Special Master pursuant to *Rule 1:20-6(b)* for the purpose of conducting ethics proceedings under *Rule 1:20-6(c)* in Docket No. XIV-99-051E, effective May 17, 2002, and until the further Order of the Court.

For the Court:

/s/ Deborah T. Poritz

C.J.

Dated: April 26, 2002

OFFICE OF ATTORNEY ETHICS

THE

SUPREME COURT OF NEW JERSEY

DAVID E. JOHNSON, .JR.

Director

OFFICE OF DIRECTOR

P.O. BOX 963

TRENTON, NEW JERSEY 08625

609-530-4008

PERSONAL AND CONFIDENTIAL

June 14, 2002

Melinda L. McAllister, Esq.
Special Ethics Master
433 Hackensack Avenue, 6th Floor
Hackensack, New Jersey 07601

Re: Office of Attorney Ethics v. George J. Cotz, Esq.
Docket No. XIV-99-051E

Dear Ms. McAllister:

This letter will confirm your prior agreement to sit as a Special Ethics Master to adjudicate the above ethics matters. This procedure is authorized by *Rule 1:20-6(b)*. You will be compensated at the per diem rate in effect for single member arbitrators under *R. 4:21A-5*, which is \$350 per diem. The per diem rate applies to all prehearing and hearing days (full or partial), but does not cover time for opinion preparation. A reasonable charge for the cost of typing the opinion, however, may be added. *R.1:20-.6(b)(2)*.

In this connection I enclose:

1. *Rule 1:20-6(b)*;
2. Copy of your Order of Appointment;
3. Special Ethics Master Hearing Docket;
4. Formal Complaint, filed January 25, 2002; and
5. Verified Answer, filed March 8, 2002.

Item No. 3 lists the parties and their counsel. If you believe there is a conflict of interest with parties or counsel for any reason, please let me know.

For your convenience, let me outline some of the more important ethics rules with which you will need to be familiar:

Immunity - As a "lawfully appointed designee" of this office, you have absolute immunity in this state for conduct in the performance of your official duties. R. 1:20-7(e).

Powers - A Special Ethics Master has the full power and authority of a hearing panel of a district ethics committee. R. 1:20-6(b) (4).

Limitations of Actions - There are no time limitations with respect to the initiation of any disciplinary matters. R. 1:20-7(c).

Burden of Proof - The burden of proof in proceedings seeking discipline or proving aggravating factors is on the presenter or ethics counsel. R.1:20-6(c)(2)(C).

Burden of Going Forward - The burden of going forward regarding defenses or demonstrating mitigating factors is on the respondent. R. 1:20-6(c)(2)(C).

Standard of Proof - "Formal charges of misconduct, medical defenses, .. shall be established by clear and convincing evidence." R. 1.20-6(c)(2)(B).

Public Hearings - "Unless a protective order has been issued in accordance with R. 1 :20-9(g), all hearings shall be open to the public in accordance with R.1:20-9(b)." R.1.20-6(c)(2)(F).

Protective Orders - "Protective orders may be sought to prohibit the disclosure of specific information otherwise privileged or confidential, in order to protect the interests of a grievant, witness, third party or respondent." R. 1:20-9(g). The commentary to this rule states that this "exception to the general rule of openness should be strictly construed and limited to only the most exceptional reasons." **A copy of any protective order entered "shall be sent promptly to the Director, the secretary of any appropriate Ethics Committee, all parties, Board Counsel and the Clerk of the Supreme Court."** R. 1:20-9(g).

Necessity of Hearings - Hearings need to be held "only if the pleadings raise genuine disputes of material fact, if the respondent's answer requests an opportunity to be heard in mitigation, or if the presenter or ethics counsel requests to be heard in aggravation. In

all other cases the pleadings, together with a statement of procedural history, shall be filed by the trier of fact directly with the Board for its consideration in determining the appropriate sanction to be imposed." R. 1:20-6(c) (1).

Hearing Room - The hearing may be held at any location. Where feasible, administrative hearing rooms are ideal.

Formality - The hearing should be conducted formally. "All witnesses shall be duly sworn." R.1:20-6(c) (2)(A).

Presence of Parties and Counsel: Sequestration - "Respondent's appearance at all hearings is mandatory" and cannot be waived. R.1:20-6(c)(2)(D).

The grievant, any counsel, respondent's counsel and "administrative staff assisting the prosecution of the matter shall have the right to be present at all times during the hearing. Any other witnesses may be sequestered during their testimony on reasonable terms on timely application and a showing of good cause." R.1:20-6(c)(2)(D).

Discovery - Discovery is available on written request by the presenter and, if an answer has been filed, by the respondent, all in accordance with R. 1:20-5(a). Neither interrogatories nor depositions are permitted in any matter, except for depositions to preserve testimony due to death, incapacity or unavailability. R. 1:20-5(a)(4).

Prehearing Conference - Prehearing conferences "shall be held in all complex cases alleging misconduct at the request of any party or the trier of fact." Attendance "is mandatory by all parties at the conference." The conference shall be held "within 45 days after the time within which an answer to a complaint is due." R. 1:20-5(b)(1). Counsel should be advised of the fact that ethics matters take priority over other matters (R. 1:20-8) and their trial schedule should be reviewed. A case management order shall be issued within seven (7) days following the prehearing conference. R. 1:20-5(b) (4).

Subpoenas - Subpoenas are available from any District Ethics Committee Secretary, Special Ethics Master or from the Office of Attorney Ethics, subject to rules of relevance. R.1:20-7(z).

Rules of Evidence Relaxed - The "rules of evidence may be relaxed in all disciplinary proceedings, but the residuum evidence rule shall apply." R. 1:20-7(b).

Adjournments - Adjournments and continuances must be requested in writing and should be granted only for "good cause" and then "only for a definite and reasonably short interval." R. 1:20-7(k).

Timetable - Hearings should be completed and a report filed within six (6) months after an answer is due. R. 1:20-8(b). The initial hearing date should be scheduled within sixty (60) days after the prehearing conference and the hearing should be concluded within forty-five (45) days after its commencement. R. 1:20-5(b)(5). The original and two copies of the opinion, together with the original and two copies of all exhibits, and transcripts should be filed directly with me, and you should serve one copy of the opinion on the parties and the grievant.

Opinion - Where a hearing is necessary, the Special Ethics Master shall render a written report of findings of fact and conclusions of law in accordance with R.1:20-6 (b) (4) and R.1:20-6 (c) (2) (F) and shall recommend either dismissal, if no unethical conduct is found, or an admonition or reprimand, suspension or disbarment, if there has been unethical conduct. R. 1:20-6(c)(2)(E). The specific nature of the public discipline should be specified.

Hearing in this matter can be held at anytime as directed by you. By copy of this letter I am advising all parties of your designation as Special Ethics Master. They should communicate with all witnesses forthwith and prepare this case for trial as directed by you. After public bidding, the **OAE has awarded exclusive, multi-year contracts to Veritext/New Jersey Reporting Company, L.L.C., 25B Vreeland Road, Suite 301, Florham Park, New Jersey 07932, (973) 410-4040, for all hearings in the northern counties** of Bergen, Essex, Hudson, Hunterdon, Morris, Middlesex, Passaic, Somerset, Sussex, Union and Warren **and to Degnan & Bateman, 219 Blackhorse Pike, Haddon Heights, New Jersey, 08035, (856) 547-2565, for all hearings in the central and southern counties** of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean and Salem. Only these reporting services may be employed. Please communicate with the appropriate agency to arrange attendance of a court reporter at hearings in this matter.

On behalf of the ethics system, please accept my thanks for your assistance in handling this complex case.

Very truly yours,

David E. Johnson, Jr.
Director

DEJ/pds
Encls.

cc: Lee A. Gronikowski, Esq., Deputy Ethics Counsel (w/part. encls.-Items 1, 2 & 3)

George J. Cotz, Esq., Respondent (w/part. encls.-Items #1, 2 & 3)
OAE Records Section (w/part. ends. - Items 1, 2 & 3)

OFFICE OF ATTORNEY ETHICS :
 : DOCKET NO: XIV-99-051E
 Complainant, :
 :
 vs. : DISCIPLINARY ACTION
 :
 GEORGE J. COTZ, ESQ. : HEARING REPORT
 :
 Respondent, :

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

The District IIB Ethics Committee Hearing Panel respectfully
shows:

PROCEDURAL HISTORY

1. Respondent was admitted as a member of the bar of New Jersey in 1974 and is engaged in the practice of law at 185 Arch Street, in the Township of Ramsey, Bergen County, New Jersey.

2. On January 25, 2002, a formal complaint (Exhibit C-21 was filed with the District IIB Ethics Committee and was served upon the respondent.

3. Respondent's answer thereto has been marked as Exhibit C-2.

4. A formal hearing was held before this hearing panel consisting of Melinda L. McAllister, Special Hearing Master on the foregoing charges on October 22, 2002 and October 23, 2002. Respondent attended without counsel and represented himself, Pro Se. The matter was presented by Lee Gronikowski, as trial counsel, on behalf of the Office of Attorney Ethics. All exhibits are submitted herewith.

SYNOPSIS OF ALLEGATIONS

5. The formal complaint filed charged the respondent with the following allegations of ethical misconduct:

FIRST COUNT

- a. Knowing misappropriation of trust funds.
- b. Violation of RPC 1.15(a) 8.4(c).
- c. Conduct involving dishonesty, fraud, deceit or misrepresentation and/or knowing misappropriation of client trust funds.

SECOND COUNT

- a. Conflict of interest-prohibited transactions.
- b. Violation of RPC 1.8(a) – conflict of interest, prohibited transactions.
- c. Failure to safeguard funds – violation of escrow agreement.
- d. Violation of RPC 1.15 – failure to safeguard trust funds.
- e. Violation of RPC 8.4(c) – conduct involving dishonesty, fraud, deceit or misrepresentation.
- f. Record keeping violations – violation of RPC 1.15(d) and R.1:21-6 (Willful failure to maintain required trust and business account records).

THIRD COUNT

- a. Failure to safeguard trust funds.
- b. Violation of RPC 1.15.
- c. Conduct involving dishonesty, fraud, deceit or misrepresentation.

d. Violation of RPC 8.4(c).

FOURTH COUNT

a. Willful failure to maintain required trust and business account records.

b. Violation of RPC 1.15(d) and R.1:21-6. Willful failure to maintain required trust and business account records.

Three Additional Charges

a. Conduct involving dishonesty, fraud, deceit and misrepresentation of RPC 8.4(c).

b. Violation of RPC 1.15(a) and RPC 8.4(c) – Lack of discovery and lawfully obstructing another parties' access to evidence and knowingly disobeying the obligation under the rules of the tribunal and candor toward the tribunal.

c. Violation of RPC 3.4(a)(c)

d. Violation of RPC 3.3(a)(1) and 3.3(a)(4) – candor towards the tribunal.

FINDING OF FACTS AND CONCLUSIONS

As a result of reviewing the testimony and exhibits, the Hearing Panel makes the following factual findings and conclusions.

6. This case, at first, centered around the attorney trust account of Mr. Cotz, and the finding by the office of Attorney Ethics was that there was an overdraft notification sent to them via mail, dated January 20, 1999. (C-1)

7. The evidence, however, showed that more violations of Rules

of Professional Conduct than the initial Complaint alleged. (October 23rd - TP 150, Line 19 through 25, and Page 151, Line 1 through 25; Page 152, Line 1 through 25; Page 153, Line 1 through 25; Page 154, Line 1 through 25; Page 155, Line 1 through 23.

8. Additionally, the Respondent has admitted practically all of the allegations (October 22nd - TP 5, Line 17 through 21).

9. Respondent, when contacted by the office of Attorney Ethics told the Attorney Ethics that Respondent admitted to the OAE that he issued a check for \$75,000.00 which he knew would bounce. (October 22nd TP17, Line 18 through 22). Thereafter, a demand audit was conducted on March 16, 1999 (October 22nd TP 19, Line 18.)

10. It appears that the Respondent had a shortage in his attorney trust account in the amount of \$18,766.33 as of September 30, 1998. (Exhibit C-24) There was to be a total client balance of attorney trust monies in the amount of \$32,408.37. There was only a bank balance of \$13,642.04. The shortages continued from October 1, 1998 through October 7, 1998 when the different in the source total amounted to \$64,515.00. (Exhibit C-24)

11. The office of Attorney Ethics made an attorney trust reconciliation and analysis sheet that was able to show the bank balance on each day with the outstanding deposits, outstanding checks and what the client's alleged balance should have been on each and every day. (Exhibit C-24)

12. More disturbingly, however, was the information elicited through testimony that one client named, Gallo had a floating loan

with the Respondent. The Respondent chose to use a floating loan activity in his trust account whereby he would remove funds and, in his own mind, they would be from the Gallo client ledger card. (October 22nd, Page 29, Line 16 through 24) It should also be noted that Exhibit C24 fairly and accurately summarize the source documents given by the Respondent. (TP October 22nd, Page 33, Lines 21 through 24 - See Exhibit C-22))

13. Moreover, from January 1, 1998 through September 30, 1998, Respondent had 36 matters that the Respondent handled for that year. One-half of them, which would be sixteen, were closed before the end of July and zeroed out. (October 22nd, Page 34, Lines 6 through 25) Therefore, as of September 30, 1998, only four matters were still active.

14. The record next reflects that the Respondent admitted that he ever properly followed the Rules of Professional Conduct concerning ledger cards and his client named, Gallo. (October 22nd, Page 33, Lines 19 through 25)

15. Moreover, the Respondent admitted that he never advised the client, if he did have a loan with the client, to seek independent counsel's advice. Respondent never executed a written loan agreement between the two for some type of security. (TP 34, Lines 13 through 25) Respondent, therefore, is guilty of violations of R.P.C. 1.15(a) and 84(c) which is conduct involving dishonesty, fraud, deceit or misrepresentation. The Respondent violated the Rules by not keeping a client/ledger card contemporaneously and allegedly having a floating

loan agreement where the client, which never was authenticated with a document, nor was this client ever told to seek the advice of independent counsel.

16. The next transaction that the Respondent sought to discuss in his testimony was the matter between a client by the name of Mr. Levin and Bradford Liva. (TP 36, entire page, and TP 37, entire page) The Respondent is charged in Count III with holding money from a settlement from a civil action in which Mr. Levin was the Plaintiff. The Defendant was a Bradford Liva. It was a foreclosure action. In contemplation of settlement, Dr. Liva paid \$90,000.00 through counsel to the trust account of the Respondent. Pursuant to an agreement between counsel representing Plaintiff and Defendant, the Respondent was to hold the \$90,000.00 until a mortgage satisfaction was released. (TP 36, Lines 14 through 22) Instead of abiding by the agreement between the parties, the Respondent, instead, released the money, stating that his client told him that he had gotten the signed Release of Mortgage. Thereafter, since he wrongfully turned monies over without retaining the Lease and Cancellation of Mortgage, the Respondent himself was sued, and he paid the person who was actually owed the money on behalf of the client. (TP 38, Lines 13 through 22)

17. However, the Respondent then lied to the Panel concerning his description of an Ethics matter that had been filed by Dr. Liva against him for the \$90,000.00 wrongfully released. (TP 40, Lines 21 through 25 and TP 41, entire page) The Respondent told the Panel that the Ethics charge that was filed against him in 1994 was dismissed,

because the Committee felt that he had not violated any ethical rules. (TP 41, Lines 1 through 10) However, the Ethics Committee, in fact, dismissed the Ethics charge pursuant to the standard rule that dismisses actions if a civil action has been filed contemporaneously concerning the same wrongful conduct. (CC 46, 47, 48, Paragraph 12) The Respondent himself witnessed and recorded the Assignment of Mortgage which was the genesis of the Complaint. (Exhibit C-46) The Assignment of Mortgage was signed by the Respondent as the assistant secretary, and it was prepared by the Respondent at the bottom of the document, and it was filed with the Bergen County Clerk Book No. 1000, Page 491. The assignment specifically states that J. D. Levin and Associates assigns their entire principal balance from a 1988 loan, prime rate with a mortgage made by Bradford Liva and his wife, Arlene Liva, the amount of \$161,909.85, and that J. D. Levin and Associates was thereby designated as the assignor of the mortgage. It assigned the interest to Vincent Hubin. It, therefore, was incredible that the Respondent stated that he did not know anything about the loan between Jack Levin and Vincent Hubin.

18. The issue concerning a \$75,000.00 check, which was the initial way that the Office of Attorney Ethics found out about the Respondent's trust account, is actually rather complicated. (TP 31, Line 18 through 25) He should have been holding more money in his trust account on behalf of various other clients than he had. Exhibit 24 specifically shows a time line of what the amount of money should have been and what it actually was. Respondent had a shortage in his

trust account of \$18,766.33 (TP 33, Line 19). There were not enough accumulated personal funds in the trust account to cover the \$18,000.00 shortage. (TP 34, Lines 1 through 3) The Respondent had four matters that were closed by the end of July. Thereafter, the Respondent admitted writing a check in the amount of \$75,000.00 which bounced. (TP 36, Lines 16 through 25)

19. The Respondent then admitted to the Panel that he was using the trust account to try to safeguard monies which he was drawing out from his business account. (TP 38, Line 23) In fact, the \$75,000.00 loan received from his friend, Mr. Reeder, was actually used to pay back another client who lent him \$20,000.00. (TP 67, Lines 6 through 7) The Ethics auditor concluded that this was a knowing as opposed to negligent misappropriation. (TP 44, Lines 23 through 25; TP 35, Lines 1 through 25)

20. Additionally, Respondent did not note any client references on the deposit slips. In fact, he wrote "me" on the deposit slips at the time when he knew he was short when he issued checks and was subsidizing his trust account to cover disbursements.

21. The Respondent took the stand on his own behalf. (TP 75, Lines 20 through 25) The Respondent admitted that there was a shortage form in his trust account for a period of over seven months. He then admitted that he knew that he did not have \$75,000.00 in the trust account when he wrote out the check to Don Reeder. (TP 77, Lines 1 through 4)

22. The Respondent then lied outright to the Ethics Committee, specifically, on TP 77, Lines 15 through 25. He stated that the money went for other things when he got the \$75,000.00 and fails to inform the Ethics Committee that he, in fact, wrote a check in the amount of \$20,000.00 to yet another client who lent him money. He purposely lied and said that stayed in the account, and \$12,000.00 was used for expenses.

23. Respondent then lied again on TP 80-81 by saying that the original ethics charge filed in 1994 was dismissed because of procedural deficiency and that the Committee felt that the had not violated any ethical rules. In fact, the 1994 Ethics Complaint was dismissed because the previous rule stayed whereby Complainant filed a civil action against the same Respondent involved in an Ethics Grievance that the Ethics Grievance must be dismissed during the pendency of that civil action. He then lied again on TP 83, Lines 1 through 15, when testifying about another client named, Mr. Zorel. Respondent testified about Zorel being an attorney where, in fact, he was a disbarred attorney. He then testified that he had multiple loans going on with multiple clients and that he had a loan with Mr. Zorel, along with Mr. Hadjiyerou. (TP 83, Lines 1 through 23)

24. Respondent specifically lied on TP 84, Lines 3 through 6, wherein he states that there are not any other clients that he lent money from when, in fact, there were. (The \$20,000.00 check written to yet another client, a Mr. Thomas)

25. The Respondent did not provide a copy of the Retainer Agreement showing the representation with Mr. Gallo. (TP 85, Lines 15 through 16)

26. The Respondent then admitted, on the record, that there were no Promissory Notes as to his constant loan back and forth between himself and Mr. Gallo. (TP 92, Lines 7 through 10) Respondent informed the Committee that he compiled all of his reconstructions on his transactions in one sitting rather than as the transactions occurred. (TP 93, Lines 18 through 25)

27. On TP 12, Lines 1 through 12, the Respondent then admitted to the Committee that he engaged in a closing whereby he executed a RESPA statement stating that there is a mortgage in the amount of \$45,000.00 that is due from the borrower to the Respondent. However, the RESPA shows that he received the \$45,000.00 even though he did not. In actuality, the Respondent testified that he received a check for \$11,000.00 and that there was \$28,000.00 left in his trust account to offset the loan that he owed to Mr. Gallo. The RESPA shows that there was a \$50,000.00 loan from Community Bank. The RESPA shows the disbursement, instead of to Mr. Cotz who was the person allegedly owed the money, a disbursement to Jack Levin for \$41,000.00. There was no check, in fact, to Mr. Levin, for \$41,000.00. Therefore, the RESPA does not match the actual deposit, and it did not happen on the 26th of October. (See Exhibit C-7, also)

28. The Respondent repeatedly states that Jack Levin did not loan him money and that he is repaying him as a compromised amount on a debt that originated on a transaction that involved Mr. Hubin.

29. The most troublesome lie centered around Respondent's testimony concerning the initial \$75,000.00 loan from Don Reeder, and the purpose of the loan.

30. On August 11, 1998, the Respondent deposited \$75,000.00 from Don Reeder. On August 17, 1998, he wrote a check for \$20,000.00. (TP 67, Lines 6 through 25) In fact, Respondent states that he wrote the check to Syracuse University, which was a lie. In fact, Respondent wrote a check for \$20,000.00 to Martin Thomas. (Ti' 106, Line 18) It turns out that he was yet another client of the Respondent. Respondent stated that he recalled that he borrowed money from Mr. Thomas. There were no documents that reflected the borrowing or writings that reflected this. He was lying to the Committee all along about the \$75,000.00 loan from Mr. Reeder. Respondent originally stated that he needed the \$75,000.00 to make a down payment on a house but, he needed part of the \$75,000.00 to pay back another client, Mr. Thomas. There was no writing on the memo to indicate the purpose of the instrument, and the Respondent stated that he represented him in an action for fraud in the sale of a business which he bought. (TP 109, Lines 20 through 25)

31. When Respondent represented Mr. Martin in 1996-1997, he had received a settlement on Mr. Thomas's behalf in the amount of

\$110,000.00. He took the \$20,000.00 from Mr. Thomas in a lump sum at that time. (TP 110, Lines 17 through 19)

32. The Respondent, even during the Committee's hearing, did not realize that the acts he committed were violations of Professional Conduct. (TB 121, Lines 1 through 25) The Respondent stated that he knew he had written a "bad check" \$75,000.00 bounced check, and he admits that it was "really dumb and improper," but does not think that there was anything unethical in "stopping a check or not covering a check." He then admitted in the next breath that he made the \$63,000.00 check bounce by taking the money out of the account. The Respondent, thereafter, testified about how many clients he borrowed money from. (TP 124, Lines 19 through 25) Respondent borrowed from four clients (that he could remember).

33. The Office of Attorney Ethics sought discovery from the Respondent. However, the Office of Attorney Ethics did not receive anything other than what was already included in the file. (TP 147, Lines 13 through 25)

DETERMINATION

34. The panel has carefully considered and reviewed the testimony in evidence and has concluded that Respondent's conduct admitted ethical misconduct

35. The violations are as follows:

FIRST COUNT

- a. Knowing misappropriation of trust funds.
- b. Violation of RPC 1.15(a) 8.4(c).

c. Conduct involving dishonesty, fraud, deceit or and/or knowing misappropriation of client trust funds.

SECOND COUNT

a. Conflict of interest-prohibited transactions.

b. Violation of RPC 1.8(a) – conflict of interest, prohibited transactions.

c. Failure to safeguard funds – violation of escrow agreement.

d. Violation of RPC 1.15 – failure to safeguard trust funds.

e. Violation of RPC 8.4(c) – conduct involving dishonesty, fraud, deceit or misrepresentation.

f. Record keeping violations – violation of RPC 1.15(d) and R.1:21-6 (Willful failure to maintain required trust and business account records).

THIRD COUNT

a. Failure to safeguard trust funds.

b. Violation of RPC 1.15.

c. Conduct involving dishonesty, fraud, deceit or misrepresentation.

d. Violation of RPC 8.4(c)

FOURTH COUNT

a. Willful failure to maintain required trust and business account records.

b. Violation of RPC 1-15(d) and R. 1:21-6. Willful failure to trust and business account records.

THREE ADDITIONAL CHARGES

a. Conduct involving dishonesty, fraud, deceit and misrepresentation of RPC 8.4(c).

b. Violation of RPC 1.15(a) and RPC 8.4(c) – Lack of discovery and lawfully obstructing another parties' access to evidence and knowingly disobeying the obligation under the rules of the tribunal and candor toward the tribunal.

c. Violation of RPC 3.4(a)(c)

d. Violation of R.3.3(a)(1) and 3.3(a)(4) – candor towards the tribunal.

36. All of the above have been found to be determined.

37. As a result, the panel recommends **disbarment**.

DISTRICT IIB ETHICS COMMITTEE

Date: April 3, 2003

/s/ Melinda L. McAllister
Special Master

[received by Office of Attorney Ethics October 6, 2004]

PERSONAL AND CONFIDENTIAL

David E. Johnson, Esq., Director
Office of Attorney Ethics
Richard J. Hughes Justice Complex
P.O. Box 963
Trenton, New Jersey 08625-0963

Re: In the Matter of George J. Cotz
Docket Number XIV-03-588E

Dear Director Johnson:

The undersigned was appointed by the Disciplinary Review Board in order to conduct a hearing ". . . limited to the reasonableness of respondent's belief that he had sufficient funds belonging to him in his trust account when he caused that account to suffer a shortfall of \$18,000 in September and October 1998."

In connection therewith, I conducted hearings on January 29, 2004 and February 26, 2004. During these hearings the Office of Attorney Ethics called Barbara M. Galati, Investigative Auditor, as a witness and Respondent called Lydia Cotz, his wife, Thomas Williams, Esq., David M. Gallina, M.D., a Neuropsychologist, Rabbi Sam Waidenbaum, and Donald Reeder, Esq. George Cotz, Esq. testified on his own behalf.

In addition to the testimony presented, the well articulated briefs submitted and voluminous materials received in Evidence in prior hearings, the following were marked as new Exhibits: SM-1, a Certificate of Attendance at a three hour seminar "Guide to Attorney Trust and Escrow Accounting" presented by the New Jersey Institute for Continuing Legal Education on September 16, 2003; SM-2, a machine stamped and dated Transaction Receipt from Fleet Bank for a deposit made on October 5, 1998 in the amount of \$1,350 and a pink deposit slip hand dated October 3, 1998 in a similar amount; SM-3, Character Reference Letters # 28 - 34; SM-4, a letter to the DRB from Lydia Cotz dated August 3, 2003 and SM-5, a draft of the Attorney Trust Account Reconciliation and Analysis performed by Ms. Galati on George J. Cotz's Trust Account marked with a hand written number C-24. The final version of this Exhibit was previously marked as number C-24 (typewritten). These exhibits are transmitted herewith.

Because of the differences between attorney discipline cases and either civil or criminal cases, the New Jersey Supreme Court has adopted a separate standard of proof, the "clear and convincing" standard. R.1:20-6(c)(2)(B). The standard is more demanding than the "preponderance of the evidence" standard applicable in civil cases and

less burdensome than the "beyond a reasonable doubt" standard of criminal cases.

The initial recommendation by Special Master McAllister was that Mr. Cotz should be disbarred as a result of several infractions. Because of this recommendation, the undersigned determined that the requisite "clear and convincing" proofs required something more than inferential proof of the alleged misconduct: "[T]his Court does not disbar lawyers based only on inference." In re: Breslin, 171 N.J. 235, 289 (2002). However, it was kept in mind that the Supreme Court has also ruled that knowledge can be inferred by reviewing the circumstances of a case to determine whether the attorney "knew the invasion [of trust funds] was a likely result of his conduct." In Matter of Skevin, 104 N.J. 476 (1986) See also In Matter of Pomerantz, 155 NJ. 122, 133 (1998) wherein the Court found that respondent's juggling of funds between her personal, business and trust accounts belied her claimed lack of knowledge in that she was out-of trust.

By way of background, in January, 1999 the Office of Attorney Ethics ("OAE") received an overdraft notification that the Trust Account held at Fleet Bank, of George J. Cotz, Esq. was overdrawn on October 5, 1998 due to the issuance of an attorney trust account check (#1809) in the amount of \$75,000 to Donald Reeder. An inquiry was made by the OAE and Mr. Cotz submitted an explanation in which he admitted that he wrote the check to Mr. Reeder knowing that there were insufficient funds in the account to cover the draft. (C-3, at pp. 1, 3). A demand audit of Respondent's books and records by OAE took place.

Based upon my review of the records, testimony of the witnesses and transcripts, I make the following findings of fact. Before the summer of 1998 Mr. Cotz had borrowed \$75,000 from his friend, Don Reeder, a fellow attorney, in order to purchase a new home. The loan proceeds were placed in Respondent's business account and, unbeknownst to Mr. Reeder, partially used by Respondent to pay obligations unrelated to the purchase of a new home.

Although that house purchase fell through, Mr. and Mrs. Cotz had found another house and Respondent wrote a check (# 200) in the amount of \$63,000 from his business account as a deposit on the second house. At the time he issued the draft, however, there was less than \$38,000 in his business account. In order to subsidize his business account, Mr. Cotz wrote check #1807 to himself in the amount of \$28,000 (C-21) from his Trust Account on September 28th and deposited same into his Business Account. (C-20). He alleges these funds were a loan from a client, Mr. Gallo.

By way of background, in 1996 or 1997 Mr. Cotz began representing Frank Gallo, a restaurateur who had sold a diner in Oakland, New Jersey, and took back a promissory note for payment. The purchaser

defaulted and Mr. Cotz pursued collection of the obligations due his clients. There were times in which payments were made by the purchaser by check, only to be returned for insufficient funds. Other times payments were made in cash. Mr. Cotz placed the payments made by the purchaser in his trust account on behalf of his client, Mr. Gallo. See Transcript of Proceedings (T1), October 22, 2002 at, 84, 8-25. He testified that ". . . over time I got \$30,000 or maybe a little more. I'm not positive." Transcript of Proceedings, February 26, 2004, page 45, 2-3.

The \$28,000 loan referred to above, was taken by Respondent from his Trust Account and was attributed to the account of Gallo, who, according to Respondent, permitted Respondent to borrow money from the account as needed. There is no writing documenting this agreement with his client nor is it clear when the verbal "loan agreement" first commenced nor is there documentation regarding the amount of funds actually borrowed from Gallo nor the amount of money available to be borrowed from Gallo. Moreover, respondent did not keep a ledger card to document when loans were taken nor the balance of these loans. Mr. Cotz kept "mental records" of the transactions. (See, T 4, 37, 22 to 38, 7).

Sometime in early 1999 Mr. Cotz re-constructed what has been marked as C-22 reflecting loans he made to himself from the Gallo account. (See C-4a, 622-627; T1, 93, 18-25). It is significant that the "Gallo Loan to GJC" balance on C-22 did increase as high as almost fifty-eight thousand dollars (October 1, 1998) even though, as of February 3, 1998, there was only \$28,430.52 in Respondent's Trust Account being held on behalf of Gallo. (C-32).

No testimony has been presented in regard to how Respondent justifies borrowing more than thirty thousand dollars from Gallo beyond that which Gallo had in his account.

Although Mr. Gallo, an elderly Florida resident, declined to participate in these proceedings (C- 15, 16, 17), there has been no affidavit, letter or other substantiation from Mr. Gallo nor testimony from Mr. Cotz explaining why no such confirmation of the matters asserted by Mr. Cotz was presented.

As a result of the withdrawal of the \$28,000 from his Trust Account, the Respondent's Trust Account balance decreased to level in which there was a shortage in excess of \$18,000 on September 29, 1998. See C-24. At that time Mr. Cotz was to have had in excess of \$32,000 in his account in funds being held for Ritchie (\$3,000), Lesko (\$2,200), Whippany (\$13,290), Adams (\$12,780) and Gallo (\$430.50) and there was actually only about \$14,000 in the account.

In the meantime, after the first house purchase fell through, on October 1, 1998, Mr. Reeder requested that his seventy-five thousand

dollar loan be repaid. Mr. Cotz, however, had insufficient funds available to him in his business account to repay Reeder in full.

Rather than issuing a "stop payment" on business account check # 200, the \$63,000 deposit on the second house, Respondent withdrew \$63,000 from his Business Account on October 1, 1998 (C-25) and deposited that amount of money in his Trust Account (C_29). (The \$63,000 withdrawal would cause there to be insufficient funds in his business account to cover the \$63,000 deposit on the second house. The house deposit check was returned by the bank for insufficient funds.) Mr. Cotz testified that he advised the attorney for the seller to whom he had given the check that the check would not clear and that he was thereby ending the real estate contract for the purchase of the second house. (See: Transcript of Proceedings, October 23, 2002 (T2), p. 71, 20 to 73, 24.)

The Respondent later attributed the deposit placed into his Trust Account as a repayment of loan to Gallo in the amount of \$63,000 on the re-constructed "Gallo to GJC ledger". (C-22, entry of 10/1). There was no testimony of the proceeds being attributed to his friend and lender of the money, Mr. Reeder.

After depositing the \$63,000 taken from his Business Account into his Trust Account on October 1st Mr. Cotz knowingly issued check #1809 in the amount of \$75,000 from his Trust Account to repay the loan made to him by Mr. Reeder. Mr. Cotz testified that he knew he did not have sufficient funds in his account to cover the Reeder check. (Ti, 76, 22 to 77, 9). Moreover, since Mr. Cotz had also previously issued check #1803 and #1806 totaling \$6,200 from his Trust Account, the available funds in his Trust Account were clearly reduced to a level at which there were insufficient funds to cover the check written to Reeder when presented on October 5, 1998. The check, as expected, bounced, causing this inquiry.

After the check to Reeder bounced and, with the \$63,000 together with other deposits of \$2,850 (C-24) made to his Trust Account, Respondent issued a check to Fleet Bank from his Trust Account in the amount of \$65,015 and, in turn, a \$65,000 cashiers check was issued by Fleet to Mr. Reeder on October 7th (C-30). This represented a partial repayment of the Reeder loan of \$75,000.

It is uncontroverted that Mr. Cotz has violated various disciplinary rules, including negligent misappropriation of client trust funds (Respondent's Brief at 1). It is undeniable that the balance in Mr. Cotz' Trust Account fell below the total amount he should have been holding for his clients when Mr. Cotz wrote a check to himself for \$28,000 in September, 1998 (See C-24). Respondent, however, now argues that

"[t]he reason I thought I had \$65,000 of my own money in my trust account (including the \$63,000 house deposit money which I had just transferred) was that for some time I had been not withdrawing fees from the trust that I was entitled to. I was trying to build up some money in the trust account to use for this house purchase, and I was under the impression that I had accumulated substantial funds of my own there" (C-3 at 3).

As stated, supra, in October, 2002 Mr. Cotz admitted issuing a Trust Account check to Mr. Reeder in the amount of \$75,000 knowing that there were insufficient funds. After the check bounced and an audit was undertaken, he argued that he thought he had \$65,000 additional dollars in his Trust Account. Ms. Galati testified that during the time period in question, an analysis Mr. Cotz' Attorney Trust Account Reconciliation and Analysis revealed that there was only \$77.87 belonging to Respondent in that account. See C-24. See also Transcript of Proceedings, January 29, 2004 (T 3), 24, 24 to 25, 3)

The question of the reasonableness of this assertion has been presented to the undersigned.

No evidence was presented by Mr. Cotz to contradict the testimony by Ms. Galati that, from January 1, 1998 until the time of the overdraft there were thirty six cases handled by Mr. Cotz. From July, 1998 until September 30, 1998 there were only five active clients for whom Mr. Cotz was holding monies in his Trust Account. (Transcript of Proceedings, T3, 20, 16 to 21; T3, 25, 22). Mr. Cotz had a client ledger card for himself in which a small amount of cash was held to cover bank fees etc., monies were held for Gallo, Adams, Whippany, Lesko and Ritchie. Subsequent to September 30, 1998, monies were held for Luhn, as well.

From a review of Exhibit C-24 together with the testimony of Ms. Galati it is clearly demonstrated that as of September 30, 1998 there was an actual adjusted Trust Account balance of \$13,642.04 in Respondent's Trust Account and, according to the Client Ledgers, there should have been monies in escrow totaling \$32,408.37. On Thursday, October 1, 1998, there was an adjusted bank balance of negative (\$3,857.96) with outstanding checks issued to O'Keefe, Whippany and Reeder and client ledger balances of \$26,908.37. On Friday, October 2, 1998, the previous adjusted bank balance and Client Ledgers remained the same and there continued to be a shortage of negative (\$30,766.33) including checks issued to Whippany and Reeder.

On Monday, October 5, 1998, the adjusted bank balance dropped to negative (\$11,977.96) with the O'Keefe check outstanding and additional checks written to Whippany in the amounts of \$208 and \$8,212, and the total Client Ledgers were \$18,788.37. On October 6,

1998, the Adjusted Bank Balance increased to \$65,692.04 as a result of the return of the Reeder draft and two deposits made by Respondent totaling \$2,350. Client Ledger balances were \$19,108.37. The following day, however, Mr. Cotz arranged for the Fleet cashier's check to be issued to Mr. Reeder (\$65,015), a check was issued to Luhn and a deposit of \$500 was made to the Trust Account on October 7, 1998. The adjusted bank balance was \$857.04 while Client Ledgers had a balance of \$18,788.37.

Thus, the Respondent's Trust Account was short on September 30, October 1, 2, 5 and 7 of 1998.

Mr. Cotz testified that his book keeping had previously been the subject of OAE inquiry. In 1994 or 1995 he went through a random audit and corrected deficiencies on the way he kept his books. (T4, 38, 8 to 39, 7). On cross-examination, Mr. Cotz testified that the deficiencies included failure to keep running cash balances; incomplete client trust ledger sheets; trust account reconciliation showed funds on deposit exceeded trust obligations; trust bank account designation improper; trust receipt book not maintained; trust disbursement book not maintained; schedule of client's ledger accounts not prepared and reconciled quarterly; receipt journal for the business account not fully descriptive; fees received for professional service must be deposited into the attorney business account. (T4, 68,15 to 69,9).

Among the reasons for the Trust Account deficiencies, Mr. Cotz asserts that Fleet was charging bounced checks given to him by others against his Fleet Trust Account. He places partial blame on the bank for charge backs to his trust account for checks cashed at Fleet and later found to have insufficient funds in the payor's account to cover the checks. However, only documentation post October 1998 substantiating this claim is found in Exhibit C-42, a bank statement dated December 31, 1998. The contemporaneous bank statements for September (C-23) and October, 1998 (C-29) show no such charges.

In light of his prior experience with the Office of Attorney Ethics in regard to his trust account (C-57, C-58), it is most troubling that Mr. Cotz testified that upon receipt of trust account bank statements he would open them, read them and go through and checks to see which checks have come back. (TI, 76, 3 to 21). As demonstrated in Exhibits C-57, 58 and 59, Mr. Cotz had actual and constructive notice that he had obligations to his clients to make sure that their funds were protected by keeping a running balance in his Trust account, do reconciliations and keep contemporaneous records and ledgers. He failed to do so.

In 1985 the Supreme Court ruled that the knowing misuse of escrow funds will subject the attorney to who has knowingly misused escrow funds to disbarment under the Wilson rule (In re: Wilson, 81 N.J. 451 (1979)). See In re: Hollendonner, 102 N.J. 21(1985). Mr. Cotz, upon

receipt and review of the trust account bank statements knew or should have known that funds were being taken by the bank to reimburse the bank for checks presented and cashed by the Respondent. The Respondent was aware of his duty as seen in his testimony:

"[w]ell, I certainly didn't want to make any mistakes with my trust account. You know, and use one person's money to pay another's obligations or vice versa. I figured if I had - if I knew what I was supposed to have for each client and if I knew that every check I was writing related to a particular client and there was money there for that client, I couldn't get in trouble." (T3, 36, 14-21).

Respondent testified that in 1997 he had borrowed \$9,000 from Gallo and did not repay it and did not take that into account when he borrowed additional sums in 1998. (T4, 45, 16 to 25). Mr. Cotz testified that during 1998 he had borrowed \$19,000 from Gallo and repaid that amount and maybe a little more by leaving fees in the Trust Account. He did not keep any written records in regard to same. (T4, 45, 7-14).

Based on the testimony and objective documentation, the claim by Respondent that he did not "knowingly" invade his trust account does not ring true. Although he asserts that he thought he had enough of his own money in the trust account to cover the checks he was writing, the same "cushion" argument was rejected in *In re: Minisohn* 162 N.J. 62 (1999). In that case, as here, Respondent did not offer any specific factual basis for his assumption. When a reconciliation/audit of the trust account was performed by Ms. Galati, it was clear that the "cushion" argument was unfounded. Mr. Cotz failed to offer evidence to sustain the contention that his belief in the existence of an adequate cushion was reasonable or justified.

There is nothing in the record to suggest that Mr. Cotz suffered from psychological stressors sufficient to cause a break from reality. (See T 3, 117, 8-15 wherein Dr. Gallina testified that there was no departure from reality as a result of his depression.) His claim of mitigation as a result of depression does not meet the standards enunciated by the Supreme Court. See *In re: Trueger*, 140 N.J. 1 03 (1995), *In re Greenberg*, 155 N.J. 138 (1998) and *In re: Jacob*, 95 N.J. 132 (1984).

From the evidence presented to me, I am satisfied by clear and convincing evidence that George J. Cotz, Esq. failed to present proofs in support of his defense that he reasonably believed he retained sufficient funds of his own in his trust account to prevent a shortage.

Respectfully submitted,

/s/ Terry Paul Bottinelli

TPB:mmi

Encl.

cc: Kim Ringler, Esq. (w/o encl.)