SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-038
District Docket No. XIV-2006-0633E

IN THE MATTER OF	:
JOHN G. TAKACS	:
AN ATTORNEY AT LAW	:

Decision

Argued: April 19, 2012

Decided: June 11, 2012

Melissa Ann Czartoryski appeared on behalf of the Office of Attorney Ethics.[1]

Mark S. Kancher appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a recommendation for discipline (disbarment) filed by Special Ethics Master Theodore A. Winard, J.S.C. (ret. on recall). A four-count complaint charged respondent with knowing misappropriation of client and escrow funds, violations of RPC 1.15(a), RPC 8.4(c), and the principles of In re Wilson, 81 N.J. 451 (1979), and In re

[1] First Assistant Ethics Counsel Michael J. Sweeney presented the matter before the special master.

Hollendonner, 102 N.J. 21 (1985). We voted for respondent's disbarment.

This matter was originally assigned to Special Master John J. McFeeley, III, who guided it through a complex set of circumstances, including a challenge to the manner in which he was selected as special master, three amended answers, four days of hearing, hundreds of exhibits, and several post-hearing submissions from the parties.[2]

According to a letter from respondent's counsel to Office of Board Counsel, dated March 23, 2012 (mistakenly dated 2011), the final post-hearing submission was a February 3, 2010 letter-brief from respondent to the special master, after which there was no further activity in the case for the next seventeen months, until the appointment of a new special master, on July 12, 2011.

The new special master, Winard, clarified the procedural posture of the case in his report:

> The instant matter lay dormant until the appointment of this Special Master by the Chief Justice on July 12, 2011. A telephonic case management conference was held on September 21, 2011 with Melissa Czartoryski, Esq. appearing for the OAE and Mark S. Kancher, Esq. appearing for the respondent. It was agreed and stipulated by counsel that

[2] The record suggests that McFeeley's health required his replacement.

> the instant disciplinary matter be decided solely on the existing record without any supplement and inclusive of the transcripts of hearing, exhibits, and both pre and post hearing correspondence sent to the then Special Master. Another telephonic case management conference was held on November 1, 2011 to settle the record and determine the existence and retrieval of the "original" record. It was ordered to avoid prejudice that the "original" record, exhibits, correspondence, notes, impressions, if any of the then Special master be kept in the custody of the OAE and not be examined, nor reviewed by any party or the present Special master.
>
> [SMR13.][3]

Respondent was admitted to the New Jersey bar in 1985. Effective August 11, 1995, he was suspended for three years, after pleading guilty to two counts of mail fraud, in violation of 18 U.S.C.A. §1341. Specifically, after being involved in a 1989 automobile accident, respondent consulted a Dr. DeLia for treatment and then agreed to file a report containing false claims. The report was mailed to Aetna Insurance. In a second matter, respondent advised one of his own clients to visit Dr. DeLia for treatment. After the client was treated, respondent submitted a purposely inflated claim to the client's insurance carrier. In the criminal matter, respondent received a three-year term of probation (three months of which were in the form

[3] "SMR" refers to the special master's report.

of home detention) and ordered to perform 500 hours of community service and pay a $7,000 fine and a restitution credit of $10,500. In re Takacs, 147 N.J. 277 (1997).

Respondent was reinstated to the practice of law on April 19, 1999. In re Takacs, 158 N.J. 151 (1999).

I. The Monaco Loan

Count one of the complaint involves several parties who were respondent's clients: Domenic Monaco; the law firm of Marc Lario and Associates, and its predecessor law firm, Lario and Saldutti; and respondent's friend and longtime client, Robert Simon, who was tangentially involved with another of respondent's clients, Richard Joseph.

Respondent represented Domenic Monaco, the purchaser of real estate in Camden owned by Cy Kranick Equipment Inc. (Kranick). The existing mortgagee on the property, the estate of Clarence W. Tabor, was foreclosing on the property at the time of the sale. The parties reached a settlement, whereby Monaco would pay the estate $15,000, in exchange for the dismissal of the foreclosure complaint.

Monaco, a personal friend of respondent and a Camden businessman, sought respondent's help in financing the settlement, so that he could continue to conduct his business on

the property.

On May 31, 2006, although respondent held no funds in his trust account for Monaco or the estate, he issued trust account check no. 275 for $15,000 to Monte Tabor, the executor of the Tabor estate. Respondent characterized the disbursement as a loan to Monaco, funded in part by respondent's own funds, which he placed in the trust account, as well as those belonging to Simon, another longtime client. At the time that respondent issued the check, his trust account contained only $676.49 on behalf of all of his clients.

After respondent issued the $15,000 Tabor check, he made several deposits to cover the check:

Date	Client [Source of Check]	Check	Deposit	Trust Account Balance	Required Balance	Shortage
06/01/06	Tabor[4] [John Takacs]		$7,000	$7,676.49		
06/01/06	Lario [and Saldutti]		$1,482.47	$9,158.96	$1,482.47	
06/01/06	[Marc] Lario [and		$3,506.26	$12,665.22	$4,988.73	

[4] Respondent's counsel clarified that Tabor was not respondent's client. OAE chief investigator William Ruskowski testified that the entry dealt with the Monaco matter. The $7,000 and $3,600 deposits represented respondent's personal funds, which were intended to partially fund the Monaco loan.

	Assoc.]					
06/01/06	Lario [and Saldutti]		$1,483.48	$14,148.70	$6,472.21	
06/05/06	Simon [Richard Joseph, Magnolia Blossom Account]		$2,000	$16,148.70	$8,472.21	
06/06/06	Tabor[4] [John Takacs]		$3,600	$19,748.70	$8,472.21	
06/07/06	Tabor	$15,000		$4,748.70	$8,472.21	($3,723.51)

[1C3,Table1.][5]

According to Table 1 above, respondent's trust account held only $4,748.70 on behalf of all clients on June 7, 2006, when the Tabor check cleared, although respondent should have been holding $8,472.21 in trust. Therefore, the trust account was short by $3,723.51.

Ruskowski testified that respondent had told him, during the OAE investigation, that the clients whose funds were "invaded," Lario's and Simon's, had not authorized him to loan their funds to Monaco. In addition, respondent admitted to Ruskowski that he should have kept the clients' funds intact in his trust account. According to Ruskowski, respondent knowingly misappropriated $3,723.51 from the Lario and Simon funds.

[5] "1C" refers to count one of the ethics complaint.

At the ethics hearing, respondent explained why he thought that he was entitled to use the funds in question for the Monaco loan. According to respondent, Monaco operated a salvage/scrap yard on the property owned by the Tabor estate. When Monaco sought to avoid the foreclosure, which would have forced the removal of his business from the property, respondent involved longtime (since 1985) client, Robert Simon, in the transaction.

Simon lived with Richard Joseph, the owner of Springhouse Farms, trading as the Magnolia Blossom flower shop, where Simon oftentimes helped out. Simon had retained respondent for numerous legal matters over the years. According to respondent,

> [Simon] had a variety of matters I represented him in. He had some financial problems. At one point he had gone bankrupt. His mother had passed away, left him some real estate. He owned a farm and Gloucester County wanted to give him farmland preservation money. I'm just thinking off the top of my head. I mean it's too numerous for me to remember. Several litigations, fights with people over all kinds of things. Even Judge Herman had sued him because he didn't like the color purple in his daughter's flowers at a wedding. It goes on and on. It's that kind of stuff.
>
> [Q.] You would bill Mr. Simon for the work you did for him?
>
> [A.] Sure.
>
> [Q.] Was he a prompt payer?

[A.] No.

[Q.] Were there times that you had what accountants like to call receivable due from Mr. Simon?

[A.] I basically always had a receivable with Mr. Simon, but the way we would work it out at the end of the year is because at the time he was not retired -- he had an active flower shop locally -- so he would put together baskets for me, poinsettias, flowers, and I gave them out at Christmas.

[3T22-12 to 3T23-13.] [6]

Respondent and Simon both testified that Simon had put no restrictions on respondent's use of a $2,000 check, deposited into respondent's trust account on June 5, 2006. Simon recalled:

[Q.] Did you communicate that to [respondent], that he was free -- well, I had used the term in the stricken question. Did you communicate to [respondent] that he could apply the check however he saw fit?

[A.] Yes, I did.

[Q.] How did you communicate that?

[A.] Since there was [sic] two things going on at the same time that the Dorman [sic] matter was going on, he could have applied the money into which direction he needed to satisfy the bill.

[4T10-23 to 4T11-7.][7]

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[6] "3T" refers to the transcript of the September 23, 2009 hearing before the special master.

[7] "4T" refers to the transcript of October 28, 2009 hearing before the special master.

Later, on cross-examination, Simon conceded that the flower shop was owned and operated by Richard Joseph, with whom he shared a house. In fact, the $2,000 check and a later $4,000 check (discussed in detail below, regarding count two) had been both drawn on Joseph's Magnolia Blossom business account. Joseph, who did not testify at the hearing, wrote and signed the two checks.

Simon admitted that he had no signature authority over Joseph's Magnolia Blossom account. "I wasn't an employee. I was just there helping him along with the business that [Joseph] had taken over." Likewise, he conceded that he had no authority to allow respondent's use of Joseph's funds for his own purposes.

With regard to the Lario and Saldutti deposits ($1,482.47, $3,506.26, and $1,483.48), which helped fund respondent's loan to Monaco, respondent testified that they represented payment of his legal fees. Respondent had known Robert Saldutti and Marc Lario, both fellow attorneys, for years. In fact, they had allowed respondent to set up a law office in their office space in Haddonfield, free of charge, when respondent experienced personal difficulties, in 2005 and 2006.

Respondent had agreed to represent Lario and Saldutti as plaintiffs[8] in a lawsuit against a software contractor named John Miller, who had been hired for computer work in their law office. Respondent recalled having settled the matter mid-trial, for much less than the $25,000 counterclaim Miller had brought. Respondent did not specify the exact amount of the settlement, however. The three checks that respondent deposited in his trust account (See Table 1, above), two from "Lario and Saldutti" and one from "Marc Lario and Associates, L.L.C.," were dated May 31 and June 1, 2006. All contained one of the following messages in the memo section: "MILLER CASE – ATTORNEY FEES" or "OTHER PROFESSIONAL FEES/JOHN MILLER CASE."

Respondent testified that he did not know had who typed the words in the memo sections of the checks. The checks appeared to be completely typewritten, save for the signatures. His attorney, Mark Kancher, questioned him further on this topic:

> [Q.] You didn't type in the memo?
>
> [A.] No.
>
> [Q.] What did you understand as to those checks, as to the moneys represented by those checks?

[8] In at least one document from respondent's counsel, a post-hearing brief, the attorneys are identified as defendants.

[A.] They wanted me to get rid of the case. They didn't care how, which way. Just get rid of it. They don't care if I used a component of this for fees. They just wanted to get rid of the case and be done with it.

[Q.] Okay.

[A.] At this time I was putting attorneys' fees checks into my trust account.

[Q.] Okay.

[A.] Okay? In addition -- you know the old saying when it rains it pours. In addition to a divorce and all these other problems and being ripped off by an attorney who I had some affiliation with, the IRS decides to assess a tax assessment against me for about $150,000. That was an incorrect number. I retained a tax attorney named Russell Stewart who's a professor at Drexel University to work this out. I knew I owed them money but not that kind of money.

[Q.] Okay. What did you learn from him?

[A.] Well, he advised me that the IRS could levy [sic] my account. Of course I was concerned about that. He said, it's a lesser of two evils. Deposit your moneys to protect them into your trust account.

[Q.] And that's what you did?

[A.] I did that.[9]

[3T32-17 to 3T33-22.]

[9] Respondent later testified that he received IRS 1099 forms from Saldutti and Lario and that he paid income taxes on the Miller fees.

According to Ruskowski, as of June 7, 2006, due to respondent's loan to Monaco, there was a trust account shortage of $3,723.51 for the Lario and Simon matters alone.

The OAE countered that the checks from Saldutti and Lario were settlement funds subject to escrow, not legal fees, for two reasons: (1) at the October 4, 2007 audit, respondent had commented that he thought the funds should have been escrowed and (2) a forensic ledger from respondent's accountant had listed those items in a section for escrow funds.[10] The accountant did not testify at the ethics hearing about his or her understanding of the purpose of the checks.

In addition, neither the OAE nor respondent called Saldutti or Lario to testify about the checks. Saldutti appeared at the hearing, ready to testify (apparently for the OAE but having been subpoenaed by respondent's counsel). At the last minute, the presenter decided not to have Saldutti testify. Respondent's counsel relieved Saldutti from the subpoena. Saldutti then left the hearing place.

The complaint charged respondent with the knowing misappropriation of $3,723.51 of Lario and Simon's funds.

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[10] The accountant listed the proper payor in all three checks, "Marc A. Lario and Associates," but listed the client as the "Miller Case". The client should have been "Lario and Saldutti" or "Marc A. Lario and Associates."

II. The Simon/Joseph Matter

Respondent was retained to represent Simon, Joseph, and Springhouse Farms, trading as the Magnolia Blossom flower shop, in an employment compensation dispute with a former employee, William G. Doerrmann, Jr.

That matter settled. Under the terms of the settlement agreement, Springhouse agreed to pay $6,000 to Doerrmann by June 2, 2006, through his attorney, Michael Berg. If Springhouse failed to pay the $6,000 in a timely manner, "with time being of the essence," Springhouse would pay an additional $10,000, plus all of Doerrmann's costs of suit.

On June 5, 2006, respondent deposited a $2,000 check of even date into his trust account.[11] Although Simon gave respondent the check, it was written by Joseph, on Joseph's own account for Magnolia Blossom. The funds were in partial payment of the $6,000 settlement. On June 19, 2006, Respondent wrote a trust account check to himself (no. 279) for $530.

Prior to disbursing the settlement funds to Berg, respondent had depleted all of Joseph's $2,000 in the trust account, none of it on account of the Doermann settlement. In fact, check no. 280, a $1.00 check to client Saldutti, which

[11] This is the same $2,000 check involved in count one of the complaint.

cleared on June 27, 2006, left the trust account with an exact zero balance.

On July 14, 2006, Joseph gave respondent an additional $4,000 check, representing the remainder of the $6,000 settlement funds due Doerrmann. Respondent conceded that the second check stated, in its memo portion, that it was on account of the settlement. Respondent deposited that check into his personal/business account.[12]

Respondent failed to leave intact Joseph's $4,000 settlement funds that he improperly placed in his personal/business account on July 14, 2006. Ruskowski testified that, on July 19, 2006, the balance in that account was $2,863.33. On July 20, 2006, the balance was $2,719.50. On July 21, 2006, it had dipped to $2,619.50. Thus, as of that date, respondent had used $3,380.50 of the total $6,000 settlement funds, for purposes unrelated to the settlement.

Despite the zero balance in his trust account and the improper deposit of the $4,000 into his personal/business account, respondent sent this one-paragraph letter to Berg, on July 18, 2006:

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[12] Ruskowski noted that respondent's attorney business account is not designated as such and that it is a standard personal "50 Plus" checking account at Commerce Bank.

> This will confirm that Mr. Simon has deposited into my escrow account now the total sum of $6,000. As promised, I will notify you on Thursday, July 20, 2006 if the balance of $4,000 clears. In the event that it does, I will forward you a check made payable to Michael Berg, Esquire in the amount of $6,000 out of my escrow funds.
>
> [Ex.OAE-10.]

Between July 18, 2006, when respondent's trust account balance was zero, and until July 24, 2006, respondent deposited a total of $13,600 into that account, an amount sufficient to enable him to issue trust account check no. 313 for $6,000 to Berg, which cleared on July 26, 2006.

At the ethics hearing, Berg testified that he had construed respondent's letter to mean that respondent held the settlement funds in escrow at all times, as that letter had stated. Berg also provided a copy of the proposed form of order that he had prepared for the case, dated July 21, 2006, wherein he had represented to the court that respondent was holding the settlement funds in escrow. Berg stated that, had he known that the funds were not actually in escrow, he would have alerted the court to the discrepancy in his proposed form of order.

Respondent conceded that he did not maintain the $2,000 in his trust account or the $4,000 in his personal/business account. He made clear, in his testimony in the Monaco loan matter, that he thought that he could use these funds for his

own purposes, because Simon had told him that he could do so, as he saw fit.

Respondent's questionable disbursements included a $530 trust account check (no. 279) against the $2,000, payable to himself, dated June 19, 2006. The funds in the personal/business account were used for a variety of respondent's personal expenses, including payments to Verizon Wireless, Whole Foods, Wegmans, Geico Insurance, and others, as evidenced by respondent's August 10, 2006 personal/business account statement.

The complaint charged respondent with the knowing misappropriation $3,380.50 of Joseph's funds, which were intended for the Doerrmann settlement.

III. The Davis to Coad Matter

Gerald and Karen Davis retained respondent to represent them in the sale of property located at 1704 Saratoga Court, Voorhees. On July 21, 2006, respondent placed in his trust account a $10,000 deposit from the buyers, the Coads.

Ruskowski testified that respondent was required to hold the $10,000 deposit in his trust account from the date of deposit, July 21, 2006, through the closing date, December 1, 2006. To that effect, on July 27, 2006, respondent sent the

Coads' attorney, William Sragow, a letter stating that he was holding the deposit in his trust account. The letter also discussed several contingencies that had yet to be met in connection with re-inspections of the property.

Respondent did not maintain the Coads' deposit intact until the December 1, 2006 closing date. In fact, Ruskowski testified, on August 22, 2006, respondent transferred $4,174.50 to Villanova University, in payment of his son's tuition, thereby reducing the trust account balance for all clients to $6,618. On September 4, 2006, the trust account held only $6,000, when respondent was required to hold $10,000 on behalf of the Davis-to-Coad matter alone. On September 8, 2006, respondent wired $10,000 from his trust account to Villanova University, in payment of his son's tuition, causing the trust account balance to dwindle to $3,285.

On October 3, 2006, respondent's trust account balance was a mere $46.71. That balance remained untouched until October 18, 2006, when respondent wrote a $46.71 trust account check (no. 324) to himself. That disbursement exactly zeroed out the trust account.

Following subsequent deposits into the trust account, its balance was $3,615.12 on October 19, 2006. Knowing that he had depleted the Davis-to-Coad funds to the penny and that he had

made subsequent deposits into the trust account, respondent issued trust account check no. 326 to himself for $1,200, on October 19, 2006, which reduced his entire trust account balance to $2,415.12. On that same date, respondent disbursed trust account check no. 327 to client John Hardy, for $2,115.12. That check and an October 19, 2006 check to client Lario for $300 cleared the bank on October 23, 2006. These disbursements once again exactly zeroed out his trust account.

Between November 10, 2006 and December 1, 2006, respondent deposited personal funds into his trust account to replenish it. On December 1, 2006, when the Davis-to-Coad matter was scheduled to close, the trust account contained $10,360.25.

At the December 1, 2006 closing, respondent issued trust account check no. 332 for $10,000 to Gerald and Karen Davis, which cleared the account on December 4, 2006, leaving a balance of $360.25. Two days later, respondent issued trust account check no. 333 to himself for the remaining $360.25, once again exactly zeroing out the trust account.

The presenter questioned Ruskowski about respondent's ability to zero out the trust account to the penny:

> [Q.] And, again, do you know how he was able to come up with that exact number that was in the trust account to write checks to himself?

[A. Yeah. He called the bank and verified the amount.

[Q.] Or you indicated online?

[A.] Or he also said that he did it online, but he knew what he had in the balance when he wrote the check.

[Q.] Now, referring you to OAE-28 — I'm sorry. In his answers, [respondent] has indicated that he made a number of ministerial errors in the trust account. Were you able to find what ministerial errors he was talking about?

[A.] I found no errors. His accounts and his mathematics were excellent and when he issued a check it was to the penny and he zeroed out the account.

[Q.] Now, you've indicated you've done a number of audits over the years, correct?

[A.] Yes.

[Q.] Have you had your share of sloppy bookkeeping cases?

[A.] Yes.

[Q.] And typically what kind of problems do you find when you have a sloppy bookkeeping case?

[A.] Well, inaccurate entries, checks with the numbers inverted, mistakes that go in the favor of the respondent, mistakes that go against the respondent. I've found none of these type [sic] of entries in [respondent's] trust account. When he issued a check, other than the one that caused us to review it, he hit zero. He didn't go below zero. He knew exactly what he had in that account so he could write a check against it.

> [Q.] Do you ever recall running into a situation where someone zeroed out the account the way Mr. Takacs did?
>
> [A.] No. That's difficult to do.
>
> [1T58-24 to 1T60-12.][13]

Sragow, the Coads' attorney, testified that the sale contract required respondent to hold his clients' deposit inviolate in the trust account, until the closing of title. The following exchange took place between the presenter and Sragow:

> [Q.] Okay. And with respect to the agreement of sale, did you -- well, let me show you the agreement one more time. If you could, with respect -- there's a provision regarding deposit moneys. Could you read that into the record?
>
> [A.] Yes. Paragraph four states, all deposit moneys made by the buyer on account of the purchase price shall be held in an interest-bearing trust account of John G. Takacs, Esquire, Attorney, who is called the escrow holder, he is counsel for the seller, and shall be applied on account of the purchase price upon compliance by the buyer with this contract.
>
> [Q.] Now, did you at any point give Mr. Takacs permission on behalf of your clients to utilize that deposit moneys prior to the closing?
>
> [A.] No.
>
> [1T108-17 to 1T109-8.]

[13] "1T" refers to the transcript of the September 21, 2009 hearing before the special master.

Sragow also discussed paragraph twenty-eight of the contract, which allowed either party to sue, in the event of a failure to settle, and paragraph twenty-nine, dealing with disputes over the deposit. Sragow stated:

> [A.] Yes. The escrow holder is not required to resolve any dispute which might arise between the seller and buyer concerning deposit payments in the trust account. The escrow holder will require from both seller and buyer their written permission to pay out the deposit from the trust account – I'm sorry -- the deposit payment from the trust account. If the dispute is not resolved, the escrow holder will retain the deposit money until the buyer and/or seller receive an order from the Court regarding distribution. Court costs and reasonable attorneys' fees will be deducted if moneys are deposited in court.
>
> [Q.] Now, does the agreement have a provision that deals with risk of loss in case of a fire?
>
> [A.] Yes. Paragraph 24.
>
> [Q.] Could you read that into the record, please?
>
> [A.] The risk of loss or damage to the property by fire or otherwise, excepting ordinary wear and tear, is the responsibility of the seller until settlement.
>
> [Q.] And so if the house burned down the day before the settlement, what was your understanding under the terms of the agreement?

[A.] That it would be the seller's responsibility to make repairs. Probably what would happen is the contract would be terminated but it would be the seller's responsibility to repair the damage.

[Q.] Okay. And if the damage was not repaired to your client's satisfaction?

[A.] Then my client would terminate the contract.

[Q. And what would happen to the deposit?

[A.] It would be returned to the buyer.

[Q.] Your client?

[A.] Yes.

[1T113-24 to 1T115-11.]

Respondent, on the other hand, viewed the contract differently. On direct examination by Kancher, he claimed that, in the absence of a specific paragraph requiring the return of the deposit upon a default by the seller, it was non-refundable:

[Q.] And you discussed [with Davis, the client] having received the $10,000 from the Coads for the sale of his house in Voorhees?

[A.] Sure.

[Q.] And he told you what with regard to that money?

[A.] He said, just like he testified to, I owe you some money, just, you know, use it.

[Q.] So what did you understand you could do with that money as a result of what he said?

[A.] Use it.

[Q.] Did you consider that money yours at that point?

[A.] The client told me to use it as I saw fit and I considered it my money, yes. Bear in mind Mr. Davis at this point qualified to buy a six million dollar real estate development in New Jersey and, you know, he had a 45-foot yacht that he didn't owe any money on. You know, he had plenty of money.

[Q.] Okay. I believe in answer to a question that was posed to him on cross-examination he's testified that if for some reason the deal didn't go through and he had to give the Coads back $10,000, he understood he'd have to pay that back. Was that your understanding according to the terms of the contract?

[A.] If for some reason Gerry changed his mind and said I'm not moving, then he'd have to pay the money back.

[Q.] So his interpretation was correct as far as you were concerned?

[A.] Yes. And he had the wherewithal to write that check.

[3T50-12 to 3T51-19.]

Davis, too, corroborated respondent's version of the events. He recalled telling respondent that he "could do with that money as he deemed fit." Davis took that position, even knowing that, if the sale did not go through and the deposit was found to be refundable, he would have to pay $10,000 to the Coads.

The complaint charged respondent with the knowing misappropriation of the $10,000 deposit.

IV. The Taylor Matter

Respondent represented Martha Taylor in a personal injury case that settled for $8,500. On November 9, 2006, respondent deposited the settlement check into his personal/business account, instead of his trust account. Ruskowski believed that respondent had intentionally deposited the settlement check into the wrong account.

The OAE and respondent did not dispute that Taylor's share of the settlement was $3,990.05.

On November 10, 2006, respondent wrote to himself a personal/business account check (no. 1188) for $3,990.05 and deposited it into his trust account. On that same date, he wrote a trust account check for $3,990.05 to Taylor.

Before Taylor negotiated her trust account check and because respondent had not properly maintained in trust the $10,000 deposit in the Davis matter, on December 1, 2006, he used all but $360.25 of Taylor's $3,990.05 share of the settlement funds, when issuing his trust account check for $10,000, representing the deposit amount from the Coads.

Thereafter, respondent issued trust account check no. 333 to himself for $360.25, which zeroed out the trust account as of December 6, 2006.

On December 7, 2006, when Taylor attempted to cash trust account check no. 330 for $3,990.05, it was returned for insufficient funds. That occurrence generated an overdraft notification to the OAE.

Respondent readily admitted having used the Taylor funds, but blamed it on his accidental deposit of the $8,500 settlement check into his personal/business account, having intended to deposit it in his trust account.

Between November 9, 2006, when respondent originally deposited the $8,500 Taylor settlement funds into his personal/business account, and December 11, 2006, when he re-issued to Taylor a check from the personal/business account (no. 1215) for $4,005.05 (the $3,990.05 plus a $15 bank fee), his personal/business account balance frequently fell below $3,990.05, the amount that he was required to hold for Taylor alone. Respondent explained:

> [Q.] What happened with that check, the one you gave to Mrs. Taylor?
>
> [A.] It bounced.
>
> [Q.] And that was when?

[A.] Over a month later. I think about a month later.

[Q.] Going to OAE-28, just referring to the last page showing that it was returned, the check was returned on December 7, 2006; would that be right?

[A.] Yeah. I have no dispute with those dates.

[Q.] Had you talked with Mrs. Taylor in the meantime?

[A.] I don't know. I probably did. What happened was she negotiated the check at the bank. She cashed it. So the check did not bounce for her, okay? She got her money. She probably didn't even know anything had happened, quite frankly. I got a phone call -- I don't know if it was from my bank or her bank -- that there was a problem. When I discovered the problem I went -- I didn't give her another check. I went to her bank and gave the manager of the bank a check.[14]

[Q.] Between the time that you wrote her the check and the time that you were notified that the check was returned, were you aware that there were insufficient funds in your account?

[A.] No.

[Q.] What did you believe?

[A.] I thought I was at zero balance. I didn't think there was an outstanding check.

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[14] Respondent was mistaken in this regard. The original check to Taylor was returned for insufficient funds. Respondent thereafter issued replacement check no. 1215 from his personal/business account.

[Q.] You mean you thought that her check had already been negotiated?

[A.] Yes. I mean the problem was I wasn't keeping ledgers. I wasn't getting my bank statements.[15] I wasn't copying the checks. It — I was a solo practitioner, very busy, probably attending to my clients' needs more than my own needs on both a financial basis as well as a physical and psychological basis and, you know, I was running by the seat of my pants basically. I'm in court three, four times a week. I do depositions. I do motions. I do briefs. I have an active practice.

[Q.] Were you keeping accurate records?

[A.] No.

[Q.] Well, were you keeping a running balance on your trust account or your business account?

[A.] No.

[Q.] And we know you had no client ledger cards at that point.

[A.] No.

[3T54-18 to 3T56-20.]

[15] Respondent conceded, on cross-examination, that he did monitor his trust and personal/business accounts through his bank's online banking service. He also utilized a telephone banking service, when he had questions about his account. Respondent admitted an awareness of the transactions in both accounts.

Respondent admitted that he never asked Taylor for permission to use her funds, because he thought that he had deposited her funds into his trust, not personal/business account.

The complaint charged respondent with the knowing misappropriation of Taylor's share of the settlement.

In mitigation, respondent testified that, by June 2006, his personal life had unraveled. He was involved in a divorce from the woman he had met in college and had married "right away." He also experienced the loss of his father, in the prior year.

Respondent claimed that he was suffering from depression as well and that he underwent psychiatric care in Haddonfield. His physician prescribed anti-anxiety and anti-depressants. He was also "drinking too much." Respondent recalled that

> when you drink with that it enhances the effect and it was a bad situation. I started to go to AA here at a church in Haddonfield. I sought help in New Brunswick from the Lawyers Helping Lawyer people. I met with a gentleman up there. They evaluated me. You know, I was trying to right the ship so to speak and eventually I did, but at that time in my life things were very, very bad.
>
> [3T46-1 to 9.]

The special master found that respondent knowingly misappropriated client and escrow funds, in violation of RPC 1.15(a), RPC 8.4(c), and the principles of In re Wilson, supra,

81 N.J. 451, and In re Hollendonner, supra, 102 N.J. 21. He recommended that respondent be disbarred.

Specifically, the special master found, in the Monaco matter, that respondent improperly used trust account funds for a $15,000 loan to his friend, Monaco. He concluded, as had the OAE, that respondent was required to hold $6,472.21 in his trust account on behalf of Saldutti and Lario. Yet, when respondent disbursed the $15,000 loan to Monaco from his trust account, the account balance dipped to $4,748.70, leaving a shortage with regard to those two clients' "funds."[16]

The special master rejected respondent's assertion that he was entitled to take the actions in question because

> Monaco was in a bad situation, he was loosing [sic] his business, he was desperate, he was going around asking people for money and he was driving around [citation omitted]. Clearly, there is no affirmative, explicit consent provided in this instance to use the trust money to provide a loan to [Monaco].
>
> [SMR23.]

The special master also rejected respondent's argument that the Saldutti and Lario funds were on account of legal fees, even

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[16] The figure used in the special master's report ($6,472.21), does not take into account the $2,000 check from client Simon, which he addressed separately, later in the report, even though the OAE used a figure of $8,472.21, which included the $2,000 Simon deposit.

though the memo sections of the checks contained language that they were for that purpose. The special master noted that, if they had been payment for fees, the proper repository for them would have been respondent's business account (R. 1:21-6(a)(2)). Furthermore, he found that respondent had failed to prove that the funds were for fees. He pointed out that respondent had not called Saldutti or Lario to testify to the veracity of his claim.

With regard to Simon/Joseph matter, the special master concluded that respondent knowingly misappropriated the $6,000 settlement proceeds, which respondent received in increments of $2,000 and $4,000. He rejected respondent's argument that he had the client's authority to use those funds, because the checks were not from Simon. Indeed, on cross-examination, Simon conceded that he had no authority to allow respondent to use the $2,000 check, which came from Joseph, the actual owner of the Magnolia Blossom flower shop and of the checking account from which the funds came.

The special master also found it important that respondent never challenged Berg's proposed form of order, which specifically required respondent to turn over the escrowed $2,000 (of the total $6,000 settlement) to Berg.

With regard to the $4,000 check from Joseph that respondent deposited into his personal/business account, the special master concluded that respondent knew that those settlement funds should have been held inviolate in his trust account, because he wrote to his adversary, Berg, that he was holding the entire $6,000 in "escrow" and would send the funds when the $4,000 check cleared. In fact, respondent used the funds and sent Berg the $6,000 only after he replenished the trust account with funds from other clients.

In the Davis-to-Coad matter, the special master found that, as escrow agent and attorney for the seller, respondent's use of a $10,000 deposit from the buyers amounted to knowing misappropriation of escrow funds. Respondent wrote trust account checks against those funds for, among other things, his son's tuition to Villanova University. The special master rejected respondent's claim that the deposit was non-refundable and that his client's "authorization" allowed his use of the funds for his own purposes. Several paragraphs of the sale agreement made clear that the deposit was subject to a refund. Finally, the special master cited the testimony of the Coads' attorney, Sragow, that he had never authorized respondent to utilize his clients' funds, prior to the closing.

Because respondent failed to establish that he had the consent of both parties to use the escrow funds, the special master found that his actions constituted knowing misappropriation.

In the Taylor matter, respondent claimed to have accidentally deposited Taylor's $8,500 settlement funds into his personal/business account, on November 9, 2006, rather than in his trust account. Nevertheless, before Taylor negotiated the check, respondent emptied the trust account, which had a zero balance on December 7, 2006, the day Taylor negotiated the check. The special master found that respondent's use of the $3,990.05 amounted to knowing misappropriation.

Finally, the special master was struck by Ruskowski's testimony that respondent possessed uncanny skills as a recordkeeper:

> It is also significant that the respondent's management of the trust account does not reflect any ministerial or mathematical errors. As pointed out by the auditor, the respondent's math was "excellent" (1T-59:13-16) and that in all of his auditing experience he never saw anyone who was able to exactly "zero out" the trust account in the way that the respondent did. Respondent knew exactly how much he had in the trust account. The respondent also confirmed his ongoing knowledge as to the balances maintained in his trust account (3T-72:16-19, 74:18-23, 76:5, 91:13-17; 124:9, 125:24, 165:20 and 168:1-20). All of the above clearly and convincingly shows the

> respondent acted with the requisite knowledge in the misappropriation of trust and escrow funds, and that he did knowingly misrepresent the retention and the integrity of those funds to others.
>
> [SMR40).

Following a de novo review of the record, we are satisfied that the special master's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence. We are unable to agree, however, with the special master's finding of knowing misappropriation in the Monaco matter (count one).

In that matter, on June 1, 2006, respondent placed in his trust account $10,600 of his own funds, plus three checks from clients Saldutti and Lario, totaling $6,472.21. Each of those three checks was identified, in the memo section, as pertaining to respondent's legal fees in the Miller suit, in which respondent was Saldutti and Lario's attorney. These deposits totaled $17,072.21, more than enough to cover respondent's June 6, 2006 $15,000 trust account check for the Monaco loan.

The critical question regarding respondent's use of the Saldutti and Lario funds is whether he was entitled to use them. If they were not for legal fees, respondent needed authorization to use them for the Monaco loan. If, on the other hand, the funds represented his fees, respondent was free to use them

(although he should have deposited them into his business account, the proper repository for attorney legal fees).

Importantly, all of the checks stated on their face that they were for legal fees in the Miller matter. Respondent, the only witness to testify about the purpose of the checks, was clear that he had not altered the checks by typing in their memo sections and that his clients had told him that he could use the funds for his fees.

The OAE's position, in turn, was that the $6,472.21 were escrow funds. First, the presenter pointed to respondent's own remarks to ethics authorities at an October 4, 2007 audit, when he commented that the funds should have been escrowed. The presenter also focused on a ledger prepared by respondent's accountant for the audit. It listed those three checks in a section for escrow funds. However, on close examination, that document raises more questions than it answers. Did the accountant understand the unusual nature of the Miller case, where respondent represented the attorney-payors?

The accountant listed all three checks with the correct payor, variously "Lario and Saldutti" or "Marc A. Lario and Associates," but listed the client as the "Miller Case." In this instance, the payor law firm was also the client. Moreover, the checks stated clearly that they were for legal fees in the

Miller case. Without knowing why the accountant concluded that the checks were escrow items and allowing for the likelihood that respondent may have relied on that information, to some degree, at the 2007 OAE interview, we determine that the evidence does not establish, by the clear and convincing evidence standard, that the funds were escrow funds and, as such, off limits to respondent.

Equally important to our analysis was the parties' failure to present Saldutti or Lario's testimony to establish whether the checks were intended for something other than legal fees. We know that Saldutti appeared at the hearing to testify, apparently for the OAE, but that, at the last minute, he did not testify for either party.

Thus, for lack of clear and convincing evidence that the funds were escrow funds, as opposed to respondent's legal fees, we dismiss the count one charge that respondent knowingly misappropriated the Lario and Saldutti funds.

With respect to the Simon/Joseph matter (count two), respondent was given $6,000 in settlement of the Magnolia Blossom dispute over an employee's compensation. Simon had been respondent's client for years and was involved with the Magnolia Blossom, which was owned and operated by Joseph, Simon's housemate.

Joseph wrote a $2,000 partial settlement check to respondent, which respondent deposited into his trust account on June 5, 2006. Respondent deposited a second check for $4,000 into his personal/business account on July 14, 2006. On July 18, 2006, respondent informed his adversary, Berg, that he was holding the funds in escrow, pending the clearing of the second check. Respondent's statement was untrue. Prior to the settlement, he had gutted the trust account, having depleted the entire $2,000 in the trust account. He used the funds for purposes other than the settlement. He left a meticulous zero balance on June 20, 2006.

Respondent also failed to keep intact the $4,000 that he improperly deposited into his personal/business account. He invaded those settlement funds and converted some of them to his own use. He made payments to Verizon Wireless, Whole Foods, Wegmans, Geico Insurance, and other personal obligations. On July 21, 2006, the balance in the personal/business account was $2,619.50, or $1,380.50 less than the $4,000 required to be held in escrow for the Simon/Joseph matter alone.

Respondent's argument that he had his clients' authorization to utilize the settlement funds is baseless. Simon testified about having granted authority to respondent, but Joseph, not Simon, owned the Magnolia Blossom and wrote the

checks to respondent. They were drafted on an account over which Simon had no authority or control. Therefore, respondent had no client authority to use the funds.

Even if he had procured that authority, he was required to obtain the consent of both parties, before converting escrow funds to his own use. In re Hollendonner, supra, 102 N.J. at 28. Respondent never even approached Berg for Doerrmann's permission to use the escrow funds. Berg testified that he never gave respondent permission to use the funds.

For all of these reasons, we conclude that respondent knowingly misappropriated the $2,000 trust account funds, as well as $1,380.50 of the $4,000 settlement funds missing from his personal/business account.

In the Davis-to-Coad matter (count three), respondent received a $10,000 deposit from the buyers, the Coads, which he was to hold in his trust account, pending a December 1, 2006 closing. Respondent, who represented the sellers, the Davises, ploughed through the entire $10,000 in the interim, twice exactly zeroing out his trust account. According to the OAE investigator, Ruskowski, respondent's actions showed uncanny accounting skills, as opposed to an unfamiliarity with his trust and personal/business records. Respondent used some of the $10,000 to pay his son's college tuition ($4,174.50 on August

22, 2006) and zeroed out the account with a trust account check to himself for $46.71.

In the Davis-to-Coad matter, too, respondent claimed to have had his client's authorization to use the escrow funds. Indeed, Davis testified that he had given respondent his permission to use what respondent and he had determined, on their own and without consulting counsel for the Coads, to be a non-refundable deposit. Davis went so far as to say that he knew that he, not respondent, would be on the hook for the deposit, if it was later determined to belong to the buyers.

Once again, however, respondent's authorization argument falls short. Indeed, several paragraphs in the contract of sale discussed contingencies that, if not met, could have resulted in a return of the buyers' deposit. Paragraph four stated that the deposit was to be held in escrow in respondent's trust account, to be "applied on account of the purchase price upon compliance by the buyer with this contract." Respondent did not hold it in escrow, as he was obligated to do. The risk of loss paragraph (twenty-four), for instance, called for the possible return of the deposit to the buyers if damage to the property, prior to closing, was not repaired by the seller in a manner satisfactory to the buyer.

Respondent also argued that, because the contract contained no paragraph explicitly dealing with the return of the deposit to the buyer, it had to be non-refundable. Yet, the contract equally failed to state that the deposit was non-refundable.

The dispositive paragraph is paragraph twenty-nine, "Dispute Between Seller and Buyer Over Deposit," which required respondent to obtain the written permission of both parties to the contract, before disbursing funds from the trust account. If a dispute could not be resolved, the funds would remain intact there, until a court order resolved the issue. The clear intent of paragraph twenty-nine was that the funds were to remain untouched, in escrow, subject to the written consent of both parties, before disbursement.

Under the circumstances of this case, thus, no attorney could have reasonably concluded that the deposit was an unfettered, non-returnable sum belonging to the seller.

We find that, in the absence of the required authorization of both parties to the escrowed funds to use them, respondent's invasion of the Coads' $10,000 deposit for his personal use constituted the knowing misappropriation of escrow funds, under In re Hollendonner, supra, 102 N.J. 21.

The final matter, Taylor (count four), involved respondent's November 9, 2006 improper placement of an $8,500

settlement check into his personal/business account, instead of his trust account. Of that amount, $3,990.05 represented Taylor's share of the proceeds.

On November 10, 2006, the very next day after the deposit of the funds in his personal/business account, respondent deposited a personal/business account check to himself for $3,990.05 into his trust account, which represented his client's share of the settlement funds. He then wrote a trust account check to Taylor for her share. Before Taylor negotiated her check, respondent emptied the trust account, using Taylor's funds in partial payment of a $10,000 disbursement to the Davises, in the Davis-to-Coad matter. It should be recalled that respondent had depleted the Coad deposit already and needed new funds to replenish the account, so that he could meet that $10,000 closing obligation. He used Taylor's incoming deposit to partially fund shortages on account of the Davis-to-Coad closing.

Respondent's actions constituted an improper practice known as "lapping". In re Brown, 102 N.J. 512 (1986) (attorney disbarred for knowing misappropriation, which involved the continuous invasion of one client's funds to pay another client's obligations, or "lapping").

Respondent urged us to consider, in mitigation, that no clients were harmed by his actions, that he was suffering from the effects of a broken marriage, alcohol abuse and depression, and that he was under the care of a psychiatrist, who had prescribed medication for his depression and anxiety. He also sought assistance for his alcohol abuse.

Although respondent's medical condition is compelling, it is largely anecdotal. In the words of the special master, "there have been no proofs provided that this respondent suffered from mental illness albeit depression and/or a psychological stress sufficient to meet the demanding standards applicable to avoidance of disbarment. In fact, the respondent has provided no medical testimony in support of his contentions."

Respondent's claim of illness also does not meet the standard set in In re Jacob, 95 N.J. 132 (1984), where the attorney admitted his misappropriations of clients' funds, but asserted a medical defense (thyrotoxicosis). The Court found that there was no "demonstration by competent medical proofs that respondent suffered a loss of competency, comprehension or will of a magnitude that could excuse egregious misconduct that was clearly knowing, volitional and purposeful." Id. at 137.

This case is similar to In re Devlin, 109 N.J. 135 (1988), where the attorney engaged in a years-long practice of "lapping"

to cure a $30,000 deficiency in his trust account, caused by a client's earlier fraud. The attorney was disbarred. The Court stated, in Devlin:

> This kind of "borrowing" of clients' funds is inexcusable, *see In re Warhaftig*, 106 *N.J.* 529, 533 (1987); *In re Lennan*, 102 *N.J.* 518, 523 (1986). Such action is expressly proscribed. *In re Brown*, 102 *N.J.* 512, 517 (1986). As this Court observed in *In re Noonan*:
>
> > [t]he misappropriation that will trigger automatic disbarment under *In re Wilson*, . . . consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking. It makes no difference whether the money is used for a good purpose or a bad purpose, for the benefit of the lawyer or for the benefit of others, or whether the lawyer intended to return the money when he took it, or whether in fact he ultimately did reimburse the client; nor does it matter that the pressures on the lawyer to take the money were great or minimal. The essence of *Wilson* is that the relative moral quality of the act, measured by these many circumstances that may surround both it and the attorney's state of mind, is irrelevant: it is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment. [102 *N.J.* 157, 159-60 (1986) (citation omitted).]
>
> [In re Devlin, supra, 109 N.J. 135, 141.]

The Court in Devlin also determined that, as in the present case, the fact that no client was actually harmed is irrelevant, (citing In re Warhaftig, supra, 106 N.J. at 534; In re Lennan, supra, 102 N.J. at 524; and In re Gavel, 22 N.J. 248, 264-65 (1956)).

Because respondent engaged in numerous instances of knowing misappropriation of client and escrow funds, violations of RPC 1.15(a), RPC 8.4(c), and the principles of In re Wilson, supra, 81 N.J. 451, and In re Hollendonner, supra, 102 N.J. 21, he must be disbarred. We so recommend to the Court.

Member Baugh did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

By: Isabel Frank
Julianne K. DeCore
for Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of John G. Takacs
Docket No. DRB 12-038

Argued: April 19, 2012

Decided: June 11, 2012

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman	X					
Frost	X					
Baugh						X
Clark	X					
Doremus	X					
Gallipoli	X					
Wissinger	X					
Yamner	X					
Zmirich	X					
Total:	8					1

By Julianne K. DeCore
Chief Counsel