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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 98-170

IN THE MATTER OF

WILLIAM WRIGHT, JR.

AN ATTORNEY AT LAW

Decision

Argued: June 10, 1999

Decided: August 23, 1999

John McGill appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter is before the Board based on a recommendation for discipline filed by special master Thomas V. Manahan.

Respondent was admitted to the New Jersey bar in 1961. He maintains an office for the practice of law at 252 Prospect Street, South Orange (Essex County), New Jersey, 07018. He has no prior disciplinary history.

The complaint in this matter contains fourteen counts of knowing misappropriation of client funds, in violation of RPC 1.15 and RPC 8.4(c).

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On December 23, 1988, the OAE notified respondent that it would conduct a random audit of his attorney records for the period January 1, 1986 through November 30, 1988. On January 12, 1989, the OAE auditor began the audit, but did not complete it. According to the auditor, it was impossible to identify clients' trust funds because: (1) respondent did not keep a cash receipts journal listing each deposit for a client; (2) client funds were sometimes transferred from one bank account to another, but the transfer was not shown on the client ledger card; (3) deposit slips rarely contained a client's name; and (4) respondent had not performed quarterly reconciliations for a number of his trust accounts. At the time of the first audit, respondent had five attorney trust accounts, as follows:[1]

Bank	Account Number	Reference
United National	100-119-2	Trust 1 ("old")
First Fidelity	838-7400-112	Trust 2 ("112")
First Fidelity	838-7400-118	Trust 3 ("IOLTA")
First Fidelity	75381-92407	Trust 4 ("bookkeeper")
National State	014-0000-043	Trust 5 ("National")

[1] For ease of reference, this decision will refer to the trust accounts as Trust 1, Trust 2, etc. The record alternatively identifies the accounts by those same references, the account numbers or the names shown in parentheses.

Respondent maintained one attorney business account at Midlantic National Bank.

The auditor testified that, at the end of the day, she had an "exit interview" with respondent and Jewels Hightower, respondent's office manager,[2] at which time she informed them of the recordkeeping deficiencies and explained to them the records that were required to be kept and how to perform the required reconciliations. According to the auditor, she had discovered that Hightower had signed trust account checks with her name and that, in one instance, she had signed respondent's name on a trust account check. The auditor testified that, when she told respondent of her discovery, he acknowledged that this practice was improper and assured her that it would not happen again.

There were four subsequent audit visits that, according to the auditor, were necessitated by a continuing lack of records, the absence of respondent and/or respondent's refusal to give the OAE certain records.

It is undisputed that, at the final audit visit, November 5, 1990, the auditor discovered that Hightower had signed numerous trust account checks with respondent's name. The auditor also discovered evidence of a check-kiting scheme involving respondent's trust accounts, business account , several W-K Development Co., Inc. ("WK") accounts and a Robin-Rite, Inc. ("Robin-Rite") account. Hightower admitted that she had been moving money among these various accounts and that she had been signing respondent's name on

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[2] Respondent and Hightower were married approximately two and one-half years after the first audit.

trust checks. Both Hightower and respondent denied that respondent knew about Hightower's activities.

According to the auditor, respondent told her that WK was Hightower's company, that he had no knowledge of WK's activities, was not an officer or director of WK, was not a signatory on any WK bank account and had no involvement in WK's operations.

* * *

After the November 5, 1990 final audit visit, the auditor obtained information on WK from corporate records filed with the Secretary of State and from bank records. She discovered that WK is a New Jersey corporation, incorporated on December 22, 1987 by respondent and an individual named Harry Kelly. On the certificate of incorporation, respondent and Kelly are shown as the directors of WK and respondent as the registered agent of the corporation. The address of WK is respondent's law office. On an October 17, 1988 registration card for WK, signed by respondent, respondent is listed as the president and Hightower as the vice-president and secretary of WK.

On September 16, 1988, respondent and Hightower opened a checking account for WK, referred to as the WK 1 account, at National State Bank. Respondent signed the account signature card and corporate resolution as president of WK and Hightower signed

them as vice-president and secretary. On December 7, 1988 and March 3, 1989, respondent signed corporate resolutions as president of WK to open WK accounts at First Fidelity Bank.

There were five checking accounts for WK, as follows:

Bank	Account Number	Reference
National State	200-481-232	WK 1
First Fidelity	838-7400-120	WK 2
First Fidelity	838-7401-763	WK 3
First Fidelity	838-7000-158	WK 4
Midlantic National	1400-334-866	WK 5

The auditor testified that, in her review of WK's bank records for the period from 1988 through 1990, she discovered that few WK checks had been written for normal business expenses. There were no checks for rent, telephone, subscriptions, dues or similar business expenses. The only payroll checks were sporadic checks to Hightower and respondent, marked "payroll." Except for a few checks, the auditor testified, the WK checking accounts were used exclusively for the "kiting" of checks and the passing of funds from one trust account to another.

According to the auditor, the check-kiting scheme was at its height between June and August 1990. The Robin-Rite account was used on a limited basis in May and June 1990.[3] The primary accounts used in the scheme were the WK accounts and respondent's attorney business account. The schedule prepared by the auditor shows that, for the twelve months immediately preceding June 1990, the deposits to the business account ranged between

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[3] There is apparently no dispute that Robin-Rite, Inc. is respondent's company.

$16,000 and $55,000. From June through August 1990, the monthly deposits to the business account were $317,093, $845,393 and $329,096, respectively. The deposits to the business account from May through August 1990 totaled $1,512,231 and the disbursements were slightly greater. During this same period, the deposits to the WK 1 account totaled $1,614,877 and to the WK 2 account $1,656,908. Again, the disbursements from the WK accounts were slightly greater than the deposits.

* * *

Respondent denied that the auditor had informed him, on January 12, 1989, that Hightower had been signing trust checks with his name and her own name. He claimed that the auditor first told him about Hightower's practice on November 5, 1990.

With respect to WK, respondent testified that he had incorporated WK to develop land, but had never pursued that plan. According to respondent, after Hightower became his employee in 1987, she told him that she needed a corporation for her business, which involved refurbishing buildings, "procuring mortgages" for clients and providing business counseling. Respondent permitted her to use WK because it was a "dormant" corporation.

According to respondent, he had no involvement in WK and had no knowledge of its operations or records. He did not dispute that he continued to be designated as WK's president on the corporate forms filed with the Secretary of State and on corporate

resolutions used to open four of the five WK checking accounts. He also did not dispute that he had signed the banks' signature cards as president of WK and was a signatory on WK's checking accounts. Respondent stated that he had continued as president of WK because "the bank desired his presence on the corporation papers." He further stated that he had agreed to become a signatory on the WK checking accounts because Hightower "was unknown to the bank and lived in Bronx, N.Y."

With respect to the check-kiting, there is no dispute that there was such a scheme. However, both respondent and Hightower denied that respondent had any knowledge of it.

According to Hightower, respondent's trust account problems began in January 1989 when First Fidelity put the same account number on two different accounts, one of which was supposed to have been a business account and the other a trust account (the Trust 2 account). This error resulted in the commingling of trust and non-trust funds. She testified that, although she attempted to solve the problem by opening the Trust 3 account and "merging" the Trust 2 and Trust 3 accounts, she was never able to fully resolve the problem of the "commingled" funds. Hightower claimed that, although respondent was aware of First Fidelity's error, she did not tell him that she was experiencing difficulty resolving the problem. According to Hightower, the problem eventually led to shortages in various accounts, which, in turn, led to the kiting of checks. The scheme collapsed in August 1990, when there was a $58,837 overdraft in the WK 1 account at National State Bank. [4]

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[4] The auditor testified that the last two checks that cleared the WK 1 account were used to cover a $52,000 overdraft in the business account.

It was when the scheme collapsed, according to respondent and Hightower, that Hightower told respondent and Kofi Boateng, respondent's accountant, about the scheme. According to respondent and Boateng, Hightower stated that the trust accounts were not involved, only the WK and the business accounts. Respondent testified that he had accepted her representation because he trusted her and because they were all very busy complying with the OAE auditor's requests.

The $58,837 overdraft was covered by a loan from National State. Respondent signed the loan documents, including a demand note, as the president of WK; however, he testified that he had told the bank officers that he was not WK's president and that he was only signing the note as a guarantor of the repayment of the loan. As security for the loan, respondent gave National State a mortgage on two properties, one of which was his residence.

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<u>The Mattox Refinance Matter (Count One)</u>

In June 1988, respondent represented Rachel Mattox in the refinancing of her house in East Orange, N.J. On June 27, 1988, the proceeds of the refinance, $61,750, were deposited in respondent's Trust 1 account. There was no retainer agreement or other writing setting forth respondent's fee. According to Mattox, respondent's fee was to be less than

$400; according to the June 14, 1988 closing statement, respondent's fee was $650. The closing statement also shows a $9,000 escrow for "Citicorp escrow for repairs." Respondent's original ledger card indicates that respondent had escrowed $9,000 for "repairs" in June 1988. Respondent's "corrected" ledger card does not show any escrow, but indicates that the funds remained in the trust account until disbursed to Mattox in January 1989.[5]

From the closing proceeds, respondent took $463.12 for "reimbursement for Time Mortgage" and $1,085.55 for "legal fees."[6] After all the disbursements, including those to respondent and Mattox, there remained $9,984.63 in the trust account.[7]

On November 23, 1988, respondent signed a $2,500 check against the Mattox funds in the Trust 1 account to WK. On December 21, 1988, respondent signed a $7,000 Trust 1 check from the Mattox proceeds, payable to himself. The check was deposited into the Trust 2 account. The checks were not shown on the closing statement or on the client ledger cards.

According to the auditor, after the checks to WK and respondent, there should have remained $484.63 in the Trust 1 account on behalf of Mattox. The Trust 1 account was

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[5] The original Mattox ledger card had been given to the auditor on January 12, 1989 and the "corrected" ledger card was given to her on May 8, 1989.

[6] The complaint did not charge respondent with misappropriation for the difference between the $650 legal fee shown on the closing statement and the $1,085.55 actually taken by respondent.

[7] In general, respondent did not dispute the auditor's testimony and the accuracy of the bank documents concerning the receipts and disbursements of funds from the various accounts.

closed in January 1989. The last positive balance was shown on January 17, 1989, when there was $.88 in the account. As of January 31, 1989, the account balance was -$2.27.

After the $7,000 check to respondent was deposited in the Trust 2 account, Hightower issued a $9,000 check from that account, payable to respondent. She signed her own name on the trust check. On January 6, 1989, the $9,000 check was deposited in the Trust 3 account. On January 8, 1989, respondent issued a $9,000 check to Mattox from the Trust 3 account.[8]

Respondent testified that the $9,000 repair escrow was not a "true" escrow. Rather, Citicorp required that $9,000 be retained by respondent to insure that Mattox complete the repairs she had begun on the property. With respect to the $9,000 check shown on the original client ledger card, respondent stated that he had drawn a $9,000 check at the time of the closing, but had never negotiated it because he realized that he could simply leave the $9,000 in his trust account; he placed the $9,000 check in the client file, but did not know what had happened to it.

According to respondent, he issued the $2,500 check to WK because Mattox had requested that he pay $2,500 to Hightower and a woman named Andrea White for their assistance in obtaining the mortgage. This was in addition to the monies paid to Time

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[8] According to the auditor, even after Mattox received the $9,000 check, she was still owed $484.63 and has never received those funds. Respondent disputed that Mattox was owed any additional monies. In any event, the complaint did not charge respondent with misappropriation of the $484.63 from Mattox.

Mortgage at the closing.[9] Although respondent did not have any documents in his file from Citicorp regarding the escrow or its release, he was certain that Citicorp had agreed that the escrow could be released to Mattox prior to his November 23, 1988 check to WK.

Respondent testified that the $9,000 payment to Mattox was a mistake; that she was only owed $6,500 from the repair escrow because she had already authorized him to release $2,500 to Hightower and White from the escrow. According to respondent, he did not realize that Mattox had been overpaid until after the ethics charges had been filed and he did not believe that he could do anything about it at that time.

Hightower testified that she and White, a business associate who had "contacts" in the mortgage industry, "packaged" the mortgage for Mattox and "got our workers to do an estimate so that [Mattox] would be able to refurbish her property." According to Hightower, Mattox agreed to personally pay Hightower and White $2,500 for their work.

Hightower testified that $7,000 was transferred from the Trust 1 account to the Trust 3 account because the Trust 1 account was being closed; the Trust 1 account was with United National Bank, whose location vis-à-vis respondent's new office in East Orange was inconvenient. There was no testimony elicited as to why the $7,000 was first put in the Trust

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[9] According to the closing statement, Time Mortgage should have been paid $2,470, but respondent paid only $1,543.75. Respondent testified that he received $463.12 from the amount due Time Mortgage as a "very nominal forwarding fee" for referring the Mattox financing. According to respondent, Hightower also received a $463.12 "forwarding fee" from Time Mortgage. However, the auditor did not discover a $463.12 disbursement to Hightower or WK from the Mattox funds.

2 account and then transferred to the Trust 3 account when, according to respondent, Citicorp had authorized him to release the escrow prior to the first transfer.

Mattox, in turn, testified that she never authorized the $2,500 disbursement to WK. Also, she denied having told respondent that he should pay $2,500 to Hightower and/or Andrea White. She believed that it was respondent who had assisted her in obtaining the mortgage and that his legal fee included compensation for his assistance. According to Mattox, she believed that Hightower was respondent's secretary and that any conversations she had with Hightower were in that capacity.

The complaint charged that respondent knowingly misappropriated $2,500 from Mattox.

The Mattox Fire Insurance Matter (Count Eight)

In 1990, Mattox retained respondent to represent her in connection with a fire insurance claim. Mattox wanted respondent to expedite the payment of the claim and to negotiate a reduction of the fee charged by the fire adjustment company, Preferred Adjusting, Inc. ("Preferred"). In January 1990, Mattox's insurance company issued a $19,021.10 check to Mattox and Preferred. On February 26, 1990, the check was deposited in the WK 2 account. Respondent made out the WK 2 deposit slip.

According to respondent, he had instructed Hightower to deposit the check in his trust account; instead, without his knowledge, she had deposited it in the WK account "in error." Respondent testified that he did not learn that the funds had been deposited in a WK account until two days later, February 28, 1990, when an employee of Preferred came to his office for payment. According to respondent, Hightower was not in the office at the time and he could not locate Mattox's funds in his trust accounts. By searching WK's records, he ascertained that the funds were in the WK 2 account. Because Preferred insisted on immediate payment, respondent wrote a WK 2 check for $2,900 to Preferred. Respondent testified that, when Hightower returned to the office, he told her to immediately remit to Mattox the balance of the funds in the account.

According to respondent, he did not transfer the funds to a trust account because Hightower had advised him that all of the remaining funds belonged to Mattox and he believed that the situation could be corrected by remitting the funds to Mattox. Respondent testified that he told Mattox about the erroneous deposit and that she had no problem with it because she "had been receiving money from her account and Ms. Hightower." Mattox, however, denied that respondent had told her that the insurance proceeds had been deposited in a WK account.

On February 27, 1990, the day after the $19,000 check was deposited in the WK 2 account, Hightower issued a $1,500 check from the WK 2 account to respondent. The memo

section of the check reads "Mattox - legal fee." The check was deposited in respondent's attorney business account. On February 28, 1990, Hightower issued a $2,000 WK check to Mattox with the notation "partial balance of monies." On March 1, 1990, Hightower issued a $3,148.40 WK check to respondent. The check, which contains the notation "Citicorp Mortgage Payment Mattox," was deposited in respondent's business account. After those checks had cleared the account, $9,472.70 of Mattox's funds should have remained in the WK 2 account. However, as of March 8, 1990, a balance of only $420.02 remained in the account.

On March 16, 1990, another check from Mattox's insurance company, in the amount of $9,800, was also deposited in the WK 2 account. According to respondent and Hightower, respondent had no knowledge of the $9,800 check. On March 19, 1990, Hightower issued a $9,451.60 check to Mattox, which cleared the WK 2 account on March 21, 1990. Although $9,821.10 of Mattox's funds should have remained in the account, as of March 22, 1990, the account showed a balance of $2,678.42.

On March 26, 1990, Hightower issued a $9,900 check to Mattox from the WK 2 account. The check was returned for insufficient funds. Hightower then issued a $3,148 check to Mattox, drawn against respondent's business account. That check was also returned for insufficient funds.

On April 4, 1990, respondent issued a $2,720 check to Mattox from his business account. Mattox also received a $7,200 cashier's check, which had been purchased with a WK 2 check. On April 9, 1990, Hightower issued to Mattox a $3,168 check from respondent's business account.

Respondent denied knowledge that Hightower had not immediately returned to Mattox the funds remaining from the $19,021.10 insurance check, after he had told her to do so on February 28, 1990. He also denied knowledge that a second insurance check had been received and deposited into a WK account. Finally, respondent denied knowledge that deposits had been made to his business account from the Mattox funds contained in the WK 2 account.

Respondent admitted that, on April 4, 1990, he issued a $2,720 business account check to Mattox and personally delivered it to her. Respondent testified that Hightower had requested that he issue the check to replace an earlier "bounced" check. According to respondent, he believed that the $2,720 represented funds still owed to Mattox from the $19,021.10. Respondent advanced this belief, notwithstanding his prior instruction to Hightower to disburse those funds to Mattox.

The complaint charged that respondent knowingly misappropriated $7,650 from Mattox. This amount was comprised of checks drawn by Hightower against the Mattox funds in the WK 2 account, payable to "petty cash" or to respondent. There were three

checks, totaling $550, made out to "petty cash" with a memo stating "office." One of the checks was endorsed and cashed by Hightower. The remaining two checks were endorsed and cashed by Carmelo Lucas, another employee of respondent. The two checks, totaling $7,100, which were payable to respondent, were deposited in respondent's business account. The memo section of one check noted "transferred to cover expenses; the other noted "expenses."

The Anderson First Financing Matter (Count Two)

In 1988, Bernice and James Anderson consulted respondent about a mortgage loan to consolidate their debts, including a Small Business Administration ("SBA") loan, and a possible compromise of the SBA debt.[10] The Andersons also needed money to make repairs to their house.

On August 25, 1988, respondent deposited the proceeds of the Andersons' mortgage loan from Parkway Mortgage, Inc., $64,500, in his Trust 1 account. On September 16, 1988, respondent signed a $27,000 check to WK from the Anderson funds.[11] According to respondent, he issued the $27,000 check to WK, with the Andersons' approval, because WK had a contract to repair the Andersons' house.

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[10] Although the Andersons' debt to the SBA had been discharged in bankruptcy in 1976, the SBA had a first mortgage lien on their house.

[11] Although four checks totaling $1,543 were issued to respondent and one check for $1,500 was issued to Hightower from the Anderson funds, those checks were not included in the complaint.

Hightower testified that she had sub-contracted the repair work, which had begun in September or October 1988 and had been completed in December 1988. There was an October 5, 1988 agreement between WK and one of the contractors for $13,807. Although Hightower maintained that she had a written agreement with the Andersons, the agreement was not produced. She did not dispute the auditor's schedule of WK payments to the sub-contractors showing that, between October 6, 1988 and November 28, 1988, WK paid them $14,655. However, Hightower claimed that WK also paid an additional $5,500 for siding for the house. There was no documentation of that payment. According to Hightower, WK's profit had been approximately $6,000.

Mrs. Anderson testified that she never authorized respondent to pay $27,000 to WK for repairs to the house and that it was her understanding that WK was going to charge $12,000 to complete the repairs.[12] According to Mrs. Anderson, respondent introduced Hightower as his office manager. She was not aware that respondent or Hightower had any involvement in WK. Mrs. Anderson testified that respondent told her he would not release any money to WK until the repairs had been completed.

Sometime after the repairs were done, Mrs. Anderson requested an itemization of the disbursements from the loan proceeds. Hightower gave her a copy of a client ledger sheet

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[12] In respondent's submission to the SBA, he attached a repair estimate from WK indicating a cost of $12,000. Mrs. Anderson had also been given a handwritten slip when she first met with respondent, showing a $12,000 cost for the repairs.

showing that WK had been paid $27,000 on August 25, 1988 for "repair work." Mrs. Anderson claimed that, although she had previously been told the repairs would cost $12,000, she did not question respondent or Hightower about the disbursement to WK. Mrs. Anderson stated that she was never provided with an itemization of disbursements from the $27,000.

On May 3, 1991, the Andersons signed an affidavit for respondent. According to Mrs. Anderson, Hightower telephoned her and asked if she and her husband could come to respondent's office because she had a paper she needed them to sign. Although Mrs. Anderson initially testified that Hightower told her the document was needed for a refinancing of the Parkway Mortgage, which is described below, the affidavit was signed after the closing on the refinancing. Mrs. Anderson later stated that she did not remember what Hightower had told her about the need for the document. According to Mrs. Anderson, she and her husband signed the affidavit, even though she did not agree with many of the statements, because "they were representing me and that this is what they wanted, that's what I would do, I would sign the paper because it had to be done."

At the hearing below, Mrs. Anderson refuted the statements in the affidavit. In contrast to those statements, Mrs. Anderson testified that she had never received a contract proposal from WK and had not signed any contracts with WK. She believed that whatever Hightower had done for her had been in her capacity as respondent's employee. Prior to

signing the affidavit, Mrs. Anderson testified, she had seen WK's name on the ledger given to her by Hightower, but knew nothing about WK. She stated that she did not learn about Hightower's and respondent's involvement in WK until she was contacted by the OAE in 1992. Although allegedly there was a proposal attached to the affidavit, Mrs. Anderson denied that anything was attached to the document when she and her husband signed it.

The $27,000 check to WK from the Anderson loan proceeds was used to open the WK 1 account at National State Bank. No other funds were deposited in the account prior to the disbursements set forth below.

On September 16, 1988, respondent signed a $3,000 check to Hightower from the WK 1 account. The memo on the check read "salary." Between September 16, 1988 and September 29, 1988, Hightower issued four WK 1 checks to respondent, totaling $23,000. The first check ($3,000) was endorsed by respondent and deposited in his personal checking account. The second check ($2,000) was also endorsed by respondent. The memo section of the check bore the notation "transferred to Midlantic as loan." The third check ($1,000) had the word "loan." The fourth check to respondent ($17,000) was endorsed by him and delivered to his attorney, Nusshy Saraya, along with respondent's personal check for $13,000. Both checks and the deposit slip showed the written words "16 Laventhal Avenue, Irvington, N.J."

Hightower also issued a check for $1,200 to Robin-Rite, with the notation "June, July, August rent at $400."

As of September 30, 1988, the WK 1 account was overdrawn by $500. Only the $27,000 check from the Anderson loan proceeds had been deposited in the account. According to the auditor, none of the $27,000 had been spent on repairs to the Andersons' house. The auditor also testified that a $2,500 check that was later given to one of the sub-contractors for the Anderson repairs had been issued against funds belonging to Mattox because the Andersons' funds had already been depleted.[13]

With respect to the $17,000 check that respondent gave Saraya, respondent could not recall the reason for that check and for a $13,000 personal check also given to Saraya. Respondent denied that the $30,000 was a deposit for the purchase of 16 Laventhal Avenue. Respondent testified that he told Saraya to hold both checks, instead of depositing them. Respondent could not recall why he had endorsed the checks, if he did not want Saraya to deposit them.

When Saraya deposited the checks in his attorney trust account, both checks were returned for insufficient funds. Saraya testified that respondent personally gave him the two checks and told him they were the deposit for his purchase of 16 Laventhal Avenue. After

[13] The auditor testified that the Anderson and Mattox funds that remained in the Trust 1 account were invaded by a November 23, 1988 check to WK for $2,500. She further testified that, because there were no funds remaining in the account to pay legitimate creditors of the Andersons, respondent invaded the trust funds of another client, Bullock, in order to pay the Andersons' creditors. However, the complaint did not allege knowing misappropriation of those funds.

the checks were returned, according to Saraya, respondent then told him that he had wanted Saraya to hold the checks, not deposit them in his trust account.

The complaint charged that respondent knowingly misappropriated $27,000 from the Andersons.

The Anderson #2 Matter (Count Seven)

In 1989, the Andersons again consulted respondent about financing because they had already fallen behind in paying their bills. The Andersons wanted to obtain enough money from a mortgage refinance to pay their outstanding debts, including the Parkway mortgage, then sell the house to pay off the new mortgage. They had already submitted an application and were on a waiting list for an apartment in "retirement housing" in Keyport, New Jersey.

On July 18, 1989, the Andersons and respondent agreed that respondent would receive a six percent commission from the sale of the property.

Respondent represented the Andersons in their refinancing with Kramer Financial Associates ("Kramer"). The Andersons obtained an $89,950 loan from Kramer. Kramer disbursed the closing proceeds, including a $1,000 fee to respondent. On January 21, 1990, Kramer issued three additional checks to respondent, in the amounts of $132.80, $4,341.26 and $4,660.40, from the proceeds of the refinance.[14]

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[14] The $4,660.40 check represented funds that had been withheld from the refinance proceeds for credit life insurance for Mrs. Anderson. Respondent had advised Kramer that, although the Andersons had sought the insurance earlier, they had decided that they did not want it. Mrs. Anderson denied having authorized respondent to cancel the insurance and denied any knowledge that respondent had received $4,660.40 from the cancellation of the policy.

On February 5, 1990, the three Kramer checks, totaling $9,134.46, were deposited in the Trust 5 account, in a sub-account for the Andersons (mistakenly shown as Henderson on the bank statements). Thereafter, the following checks were written against the Anderson sub-account:

Date	Payee	Check Memo	Amount
2/5/90	William Wright, Jr. PA	legal fee, Anderson refinance	$1,000
2/5/90	William Wright, Jr. PA	reimbursement, office costs	1,259
2/6/90	WK	services rendered	2,000
2/8/90	Andersons	bal. from closing	1,000
2/12/90	James Taylor	balance of boiler payment	1,300
2/12/90	WK	mortgage payments	2,100
2/21/90	WK	mortgage payment balance	450

Hightower signed respondent's name on the two checks to respondent and deposited them in the business account. Respondent signed the first two checks to WK. There was no testimony elicited as to whether respondent or Hightower signed the last check to WK. According to the auditor, the payments to respondent and WK, totaling $6,809, were misappropriated from the Anderson funds. Both the auditor and Mrs. Anderson testified that the Andersons were never repaid the $6,809.

According to Mrs. Anderson, the proceeds of the refinancing were left in respondent's trust account because respondent was supposed to remit the first few mortgage payments to Kramer from those funds.

Respondent denied that he had agreed to pay the mortgage from the loan proceeds. According to respondent, it was Hightower who had agreed to remit the mortgage payments to Kramer on behalf of the Andersons. Respondent claimed that the payments to him were

legitimate. He stated that the $1,259 for "office costs" was to reimburse him for a $500 mortgage application fee and a $759 insurance premium that he had advanced for the Andersons; the additional $1,000 fee was for his representation of the Andersons in the foreclosure action, not the refinance. However, as noted above, the $1,000 check indicated that it was for the refinance. There was no documentation to support respondent's contention that he was entitled to the $2,259.

Hightower testified that the funds were transferred to WK, with Mrs. Anderson's approval, for WK to pay the Kramer mortgage and to clean up the East Orange property for viewing by potential purchasers. The mortgage was not paid, according to Hightower, because, once Mrs. Anderson realized that she would not be able to sell the property, she decided to let it go into foreclosure. Hightower admitted that she misused the Andersons' funds, except for approximately $800 that was used to clean up the property. She claimed that she eventually repaid all of the remaining funds to the Andersons. However, there was no documentation that any of the $6,809 had actually been repaid to the Andersons.

There is no dispute that the mortgage payments were not made. The mortgagee filed a foreclosure action. For a time, respondent represented the Andersons in the foreclosure matter and obtained an adjournment in the proceedings because there was a potential purchaser. However, the sale was never consummated and the foreclosure proceeded to its conclusion.

The complaint charged that respondent knowingly misappropriated $6,809 from the Andersons.

The Ross Matter (Count Three)

Silvia Ross retained respondent to represent her in the refinancing of the mortgage on her house at 21 Olive Street, East Orange, N.J. The primary purpose of the refinance was to provide funds for the purchase of a house at 170 Fairmont Avenue.[15] Ross also wanted to pay off a judgment to Public Service Electric & Gas Co. ("PSE&G").

On December 21, 1988, respondent received $77,385 from Parkway Mortgage for the Ross refinance and deposited those funds in his Trust 2 account. There were four escrows created from the refinance proceeds, two of which are relevant to this matter: a $25,000 escrow for the PSE&G judgment and a $5,000 escrow to be held until the completion of repairs on the 21 Olive Street property.

With respect to the $5,000 repair escrow, on January 10, 1989, Hightower issued a $5,000 check from the Ross funds to the WK 2 account. Hightower signed her name to the Trust 2 check. Prior to the deposit of the $5,000 check, there was only $22.93 in the WK 2 account.

[15] Although Ross could not remember exactly how many houses she owned in December 1988, she knew that she owned more than one house. At one time, she owned as many as nine houses.

On January 11, 1989, Hightower issued a $4,850 check from the WK 2 account to respondent. The check was deposited in respondent's Trust 3 account. The $4,850 was transferred from the Trust 3 account to respondent's business account on April 3, 1989 and used for purposes unrelated to the Ross refinance.

With respect to the $25,000 PSE&G escrow, on January 3, 1989, the funds were transferred from the Trust 2 account to a separate sub-account for Ross in the Trust 4 account. The judgment was settled for $18,000. On June 13, 1989, respondent issued an $18,000 check from the Ross sub-account. With accrued interest, there remained $7,723.78 in the sub-account. During October and November 1989, Hightower signed respondent's name to four checks to WK, totaling $6,300, issued against the Ross sub-account. The memos on the checks indicated that they were for "piping replacement," "contract fees," "repairs" and "contractor wall replacement."

By letter dated August 24, 1990, respondent sent Ross a $6,505.98 check from the Ross sub-account, allegedly the balance of the PSE&G escrow. The funds for that check came from two WK 3 account checks. The funds for the WK 3 checks came from trust funds held for other clients of respondent: Joseph and Marie DeJoie, Lina Sergile and Augustus and Mary Joseph.[16]

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[16] The complaint did not allege knowing misappropriation of funds from Sergile or the Josephs. As to the DeJoies, see counts nine and eleven below.

In October 1990, Ross filed a civil action against respondent, Hightower and others, seeking an accounting. Among the issues was the $5,000 repair escrow. According to respondent, the Honorable Irwin I. Kimmelman found that Ross had authorized respondent to pay the $5,000 repair escrow to WK. Respondent argued that equitable estoppel precluded the "relitigation" of the issue at the ethics hearing.

At the September 1991 trial before Judge Kimmelman, respondent and Hightower had testified that Ross had hired WK to do the repairs to her property and had authorized respondent to release the $5,000 to WK. They further testified that, when Ross arranged for someone else to do the repairs, the $5,000 repair escrow had remained intact in WK's account. Judge Kimmelman ordered that the $5,000 be returned to Ross.

At the ethics hearing, respondent testified that, after the mortgage company gave its consent to release the repair escrow, Ross told him to give the funds to WK because WK was going to be working on other projects for her. Hightower, on the other hand, testified that she wrote the $5,000 Trust 2 check to WK with Ross's consent, albeit without respondent's knowledge. It is undisputed that the funds did not remain intact in the WK account and that they were not used for Ross's benefit.

With respect to the funds that were improperly disbursed from the $25,000 PSE&G escrow, respondent denied knowledge that Hightower had written four trust checks to WK,

totaling $6,300, from the Ross Trust 4 sub-account and that the funds had been subsequently returned to the sub-account by invading the trust funds of other clients.

Ross testified that she never authorized respondent to use the $25,000 PSE&G escrow for anything other than the payment to PSE&G. She also testified that she never authorized respondent or Hightower to release the $5,000 repair escrow to WK.

The complaint charged that respondent knowingly misappropriated $11,300 from Ross.

The Henderson Matter (Count 4)

Respondent represented William Henderson in the sale of his house to Patricia Carroll. At the closing, respondent received a total of $15,173.90, representing Henderson's proceeds from the sale. On April 18, 1989, respondent deposited those funds in his Trust 3 account.

On April 24, 1989, respondent wrote a $7,500 trust check to WK against the Henderson funds. The check was deposited in the WK 2 account, which at the time had a balance of only $86.30. Within two days of the deposit, the entire $7,500 had been disbursed, as shown by the following table:

Date	Payee	Check Memo	Amount
4/24/89	William Wright		$3,000
4/24/89	Jewels Hightower		1,500
4/24/89	WK	deposit	1,000
4/24/89	William Wright, Jr. PA		1,000
4/26/89	William Wright, Jr. PA		1,000

All of the checks were signed by Hightower. Hightower endorsed the check to respondent by signing his name and then cashed the check. The $1,000 check to WK was endorsed by respondent and deposited in the WK 1 account. The two checks to respondent's law firm were endorsed by Hightower and deposited in respondent's business account.

According to respondent, the $7,500 represented Henderson's and Henderson's brother's deposit on the purchase of a house from Sylvia Ross. Although he had prepared the contract, allegedly at Hightower's request, and witnessed the Hendersons' names on the contract, respondent denied that he had represented the Hendersons or Ross in the transaction. Respondent testified that he made the check to WK because the contract called for WK to hold the deposit. Respondent denied any knowledge of the WK checks that were drawn against the Henderson deposit.

Hightower admitted that she had used the Henderson deposit to replace other clients' funds that she had previously taken. She had no specific recollection of how the funds had been used. She denied that respondent knew that she had disbursed the Henderson funds almost immediately after their deposit into the WK 2 account.

According to Henderson, the $7,500 was to be held by WK as the deposit for his purchase of the house. He did not authorize Hightower to use the funds for any other purpose. There was never a closing on the house because the Hendersons could not obtain a mortgage. Ross eventually evicted the Hendersons. As stated above, Ross sued the Hendersons,

respondent and Hightower. Henderson believed that the back rent that Judge Kimmelman had ordered the Hendersons to pay Ross, approximately $2,100, was paid by Hightower out of the $7,500 deposit. Henderson testified that he thereafter received the remainder of the deposit, less unspecified amounts that he and his brother had previously "borrowed" against the deposit.

The complaint, as amended, charged that respondent knowingly misappropriated $7,500 from the Hendersons.[17]

The Moore Matter (Count Five)

On June 28, 1989, respondent represented Calvin Moore in the refinance of his house in Newark, N.J. The proceeds of the refinance, $157,500, were deposited in a Trust 4 sub-account for Moore. At the closing, respondent escrowed $80,000 to comply with a divorce judgment obtained by Moore's former wife. After all the disbursements and the judgment escrow were deducted from the proceeds of the refinance, Moore stood to receive $40,524.72. Those funds, however, were not remitted to him.

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[17] The complaint initially alleged that respondent misappropriated $5,000 from the Henderson closing funds because, in addition to his $1,000 fee for the closing, respondent had taken $5,000 from the loan proceeds. The special master permitted the OAE to amend the complaint to also allege misappropriation of the $7,500 paid to WK. After the hearing, the OAE dismissed the $5,000 misappropriation charge because Henderson testified that he owed respondent additional legal fees for other matters.

According to the auditor, the following checks were improperly drawn to respondent and WK against the Moore sub-account:

Date	Payee	Check Memo	Amount
6/29/89	WK Development		$ 6,500
8/29/89	WK Development	home improvement	3,000
9/15/89	WK Development	architectural plans	6,000
9/21/89	William Wright, Jr., P.A.	legal fee	1,500
9/28/89	WK Development	completion of drawings	3,500
10/06/89	WK Development	const. plans	2,500
10/13/89	WK Development	plans	2,500
10/19/89	WK Development	repairs – 49 Field Place	4,000
11/08/89	WK Development	boiler repair	9,000
		Total	$38,500

Hightower had signed respondent's name on all of the unauthorized trust checks, except for one check that was accepted unsigned. The auditor testified that she was able to trace all of the Moore funds that had been improperly deposited in the WK accounts and that none of the funds had been used for the purposes stated on the checks or for Moore's benefit.

The client ledger card and a "summary of activity" for the Moore refinance, which had been given to Moore and to the auditor, did not show any of the above disbursements to respondent or WK. The ledger card also did not show that, between February 21, 1990 and November 7, 1990, $37,100 was redeposited in the Moore sub-account to replace funds that had been previously taken. The "restitution" funds came from other clients' funds and other sources through the WK 1, 2, 3 and 4 accounts and cash. Eventually, according to the auditor, Moore was paid all but $1,400 of the $38,500 that had been improperly taken.

Apparently, Moore did not ask for his money or any accounting from respondent until mid-1990. Eventually, Moore retained another attorney to assist him in obtaining his refinance proceeds from respondent.

According to respondent, Moore requested that he keep the refinance proceeds in his trust account until Moore needed the money. Respondent testified that Hightower made out the trust checks without his knowledge, but that Moore had authorized the disbursements to WK and had "conspired" with Hightower to conceal the disbursements from respondent. Respondent did not explain why Moore wanted to hide from him the fact that Moore was authorizing disbursements from his own funds. Respondent also testified that the $1,500 payment to him had been owed him for his representation of Moore in other matters. Prior to the $1,500 disbursement to respondent, he had already received payments of $2,500 and $1,074.39 out of the Moore funds.

Hightower admitted that she used some of the Moore funds to replace funds previously taken from other clients and that she had used Moore's and Ross's funds because she knew that they were not seeking the immediate release of their funds. However, she maintained that she had disbursed trust funds to Moore before his attorney sought an accounting. According to Hightower, Moore would request partial distributions for various projects. In order to disburse trust funds to Moore, she would make the checks to WK. She did not explain why the disbursements were done in this manner and did not provide any quantification or documentation of the alleged interim disbursements to Moore.

Boateng testified that, sometime in October or early November 1990, he prepared a summary of the Moore transactions, which was then used to prepare the "summary of activity." According to Boateng, he did not list the payments to WK because he knew that the payments should not have gone to WK. He also did not list a check that had been returned for insufficient funds. In the "summary," he only included those payments that he believed had been properly paid from the Moore trust funds.

The complaint charged that respondent knowingly misappropriated $38,500 from Moore.

The Beauzil Matter (Count Six)

On December 7, 1989, respondent represented Andre and Marie Beauzil in their purchase of a house from Jules and Lamercie Joseph. Respondent was the settlement agent and was supposed to pay off the Josephs' $27,477.40 mortgage from California Mortgage Company. The following facts are not in dispute:

- the mortgage was not paid until May 1990;
- the mortgage was not paid prior to May 1990 because $26,000 of the Beauzil funds had been improperly diverted to WK;
- on December 18, 1989, Hightower signed respondent's name on a $26,000 trust check to WK, written against the Beauzil Trust 4 sub-account;
- the $26,000 check was deposited in the WK 2 account;

- the funds were then used to replace funds that had previously been taken from another client, Elizabeth Flowers;
- on April 9, 1990, a Trust 4 check from the Beauzil sub-account to California Mortgage was returned because there was only $2,336.46 in the sub-account;
- the mortgage was ultimately paid by a $27,477.40 certified check, dated May 1,1990, drawn against the Trust 4 account;
- the Trust 4 check was signed by respondent;
- the notations on the Trust 4 check showed that it related to the Beauzil trust;
- a separate check from the business account, signed by Hightower, was drawn for the additional interest owed on the mortgage;

Respondent and Hightower claimed that respondent had no knowledge that Hightower had taken $26,000 from the Beauzil funds. According to respondent, he signed the mortgage payoff check and the transmittal letter to California Mortgage on December 8, 1989. He did not learn that the mortgage had not been paid until May 1990. Respondent did not recall Hightower's explanation as to why he had to sign another mortgage payoff check, although he recalled having been satisfied with her explanation. According to respondent, he did not know, in May 1990, that Hightower had written a check from his business account to pay the additional mortgage interest and it did not occur to him, at that time, that additional interest would be owed because of the late payment.

Hightower initially denied that client funds had been used to pay California Mortgage. She maintained that the funds had come from fees in the business account and her personal

funds. However, she later admitted that she had taken other clients' trust funds. According to the auditor, the funds used to ultimately pay California Mortgage came from the trust funds of Joseph and Marie DeJoie and Marie Adams, and from a real estate deposit that respondent had received from Ernest Williams. Williams had given respondent a $9,000 deposit in connection with his purchase of real estate from respondent.[18]

The complaint charged that respondent knowingly misappropriated $26,000 from the Beauzils.

The DeJoie #1 Matter (Count Nine)

In 1990, respondent represented Joseph and Marie DeJoie in their purchase of a house from Lonnie Anderson. On April 18, 1990, respondent received a $9,000 check from the DeJoies for the real estate deposit. The deposit was supposed to be sent to the seller's attorney. Instead, after respondent endorsed the check, it was deposited in the WK 2 account. On April 20, 1990, the DeJoies' $9,000 deposit and an additional $9,000 were transferred to the Trust 4 account. The deposit was used to replace funds previously taken from the Beauzils, as explained above.

According to the auditor, Mrs. DeJoie told her that, when the seller's attorney complained that he had not received the deposit, she contacted respondent, who told her that

[18] The complaint did not allege a misappropriation of the Williams' deposit. Count ten below addresses the Adams knowing misappropriation charge.

the check must have been lost. Respondent asked her to issue another check. On May 10, 1990, the DeJoies issued a $9,000 check directly to the seller's attorney. On May 11, 1990, Hightower issued a $9,000 business account check to the DeJoies to replace the initial deposit check.

Respondent testified that he had endorsed the deposit check, which should have been deposited in his trust account. He denied any knowledge of the check's deposit in a WK account or the use of a business account check to replace the deposit funds. He also denied having ever spoken with Mrs. DeJoie.

Hightower admitted that she took the DeJoie deposit for the purpose of "circulating money." She did not recall what she did with the money or where she obtained the funds to replace the $9,000.

The complaint charged that respondent knowingly misappropriated $9,000 from the DeJoies.

The DeJoie #2 Matter (Count Eleven)

The DeJoie real estate purchase from Anderson closed on July 13, 1990. Respondent was the settlement agent. All of the settlement funds had been deposited in the Trust 5 account. At the closing, two escrows were established, with respondent as the escrow holder. The escrows totaled $20,100.

On July 25, 1990, Hightower signed respondent's name to a $10,000 trust check made out to WK 2 . On August 28,1990, she signed respondent's name on a $5,500 trust check issued to WK 3. Both of the checks were drawn against the DeJoie escrow. Neither of the checks were shown on the client ledger card that had been given to the auditor. The $10,000 and $5,000 were used to replace funds previously taken from Moore and Ross, respectively.

On or about August 23, 1990, the Honorable Daniel J. Moore ordered that respondent return $17,000 of the $20,000 escrow to the bankruptcy trustee. (Anderson was in bankruptcy proceedings). On August 23, 1990, respondent signed a $17,000 check for the trustee. Hightower signed an August 24, 1990 cover letter forwarding the check. At that time, there were insufficient funds in the DeJoie sub-account to cover the check. Hightower testified that she delayed sending the check to the trustee until she could replace the funds she had previously taken from the escrow.

On September 14, 1990, there was a $10,000 deposit and, on September 27, 1990, there was a $550 deposit into the DeJoie Trust 5 sub-account from the WK 3 account so that the check to the trustee would clear the account.

Respondent and Hightower contended that respondent had no knowledge of Hightower's invasion of the DeJoie escrow or of Hightower's delay in sending the check to the trustee.

The complaint charged that respondent knowingly misappropriated $15,500 from the DeJoies.

The Adams Matter (Count Ten)

In 1990, respondent represented Marie Adams in a personal injury matter. On April 19, 1990, Zurich Insurance Company issued a $4,500 check to Adams and respondent in payment of the claim. Adams and respondent endorsed the check, which was deposited in the WK 2 account on April 26, 1990. The funds were then used to replace funds that had been previously taken from the Beauzils.

On June 8, 1990, Adams was given a $1,592.07 business account check signed by Hightower. At that time, the funds in the business account consisted primarily of funds that had been transferred from the WK 1 account.

Respondent and Hightower testified that respondent had no knowledge of the diversion of the Adams' settlement check to WK, the replacement of the Beauzil funds, or the eventual payment from the business account.

The complaint charged that respondent knowingly misappropriated $4,500 from Adams.

The Gonzalez Matter (Count Twelve)

Nilda Gonzalez retained respondent to represent her in a personal injury matter. By letter dated June 8, 1990, respondent advised Gonzalez that he would pay her treating physician, Dr. Leclerc Adisson, $2,647 from the settlement proceeds.

In July 1990, Empire Fire and Marine Insurance Company issued a check for $9,500, payable to Gonzalez and respondent, in settlement of the claim. On July 23, 1990, the check was deposited in a Trust 5 sub-account for Gonzalez.

On July 25, 1990, respondent signed a $2,600 check against the Gonzalez funds, payable to WK 2. He also signed a $3,130 check to himself for his contingent fee. On July 27, 1990, respondent signed a check to Gonzalez for $3,569.80. After the check to Gonzalez cleared the sub-account, a balance of only $200 remained. At that time, respondent should have been holding $2,647 to pay Dr. Adisson.

According to respondent's client ledger card for Gonzalez, the check to WK had been "reversed" on March 1, 1991 and those funds used to write a check for Dr. Adisson. In fact, the check to WK had not been reversed.

On March 1, 1991, respondent signed a check to Dr. Adisson for $2,620 from another Trust 5 sub-account, a sub-account designated for respondent's use. The memo portion of the check referenced the Gonzalez matter. The source of the funds used to ultimately pay Dr. Adisson came from the WK 5 account. The funds in the WK 5 account came from a Hudson City Savings Bank check to respondent.

On February 22, 1991, respondent had received and endorsed a $14,700 Hudson City check, representing the proceeds of a personal mortgage refinance. The check was deposited in the WK 5 account. Hightower then wrote a $5,612 WK check to the National State Bank [Trust 5] against respondent's loan proceeds. Respondent filled out a deposit slip for the

Trust 5 account and the check was deposited in that account. That was the source of the funds used to pay Dr. Adisson.

Gonzalez testified that she had been unaware that respondent had not paid Dr. Adisson for seven months after she had endorsed the settlement check. According to Gonzalez, she never authorized respondent to use any portion of the settlement proceeds for any purpose, other than to pay Dr. Adisson. She had never heard of WK until April 16, 1991, when she was contacted by the OAE.

Gonzalez also testified that, on August 6, 1991, while meeting with respondent about another matter, respondent requested that she sign a statement for him. Respondent and Hightower, who had entered the office, told Gonzalez that Hightower had mistakenly written a check to WK from Gonzalez's account. They also told her that, when they discovered the error, the money was replaced and Dr. Adisson was paid. Respondent indicated to Gonzalez that he was being investigated and requested that Gonzalez sign a statement that she had loaned the money to WK. According to Gonzalez, respondent did not give her the statement to read; he only gave her the signature page to sign. Gonzalez stated that she wanted to take the statement with her to review it, but respondent refused to give it to her. Gonzalez claimed that she refused to sign the statement because it was not true. On August 19, 1991, Gonzalez reported the incident to the OAE.

Respondent denied that he had requested Gonzalez to sign such statement.

According to respondent, when he signed the trust check to WK from the <u>Gonzalez</u> sub-account, he simply failed to appreciate the source of the funds. He explained that

Hightower always presented him with a number of checks and letters to be signed at the end of the day and that sometimes he did not examine them carefully enough.

With respect to the fact that, more than seven months after receiving the settlement proceeds, he had paid Dr. Adisson from his own trust sub-account, respondent testified that the sub-account had been established by the bank after the bank had "inadvertently mislaid or not identified" funds in several trust accounts. According to respondent, National State Bank had changed the way it designated sub-account numbers and, because of the changes, the funds in several of the trust sub-accounts had been "mislaid." Respondent further testified that, in order to correct the problem, the bank opened a sub-account in respondent's name and put the "mislaid" client funds in that sub-account.

In support of his testimony about the "mislaid" client funds, respondent submitted an undated letter from the bank, received by the OAE in May 1991. In the letter, the bank stated that, due to a software conversion, respondent "ended the conversion period with two accounts bearing his name. One was the master account and the other a sub-account. The monies in the 'sub' should have been combined to the master account." The letter does not state that client funds had been "mislaid" or that client funds had been placed in respondent's sub-account.

With respect to the proceeds of his mortgage refinance with Hudson City, respondent testified that he did not know that the loan proceeds had been deposited in a WK account. He stated that he had deposited the $5,612 check in the Trust 5 account because he owed that amount to his prior mortgage company and the company had required a trust check.

According to respondent, he was not aware that the check that was being deposited was from a WK account.

The complaint charged that respondent knowingly misappropriated $2,620 from Gonzalez.

The Nwachukwu Matter (Count Thirteen)

In 1990, respondent represented Samuel and Beatrice Nwachukwu in their purchase of property from Charles Ward. The contract required an initial $1,000 deposit and an additional $8,000 payment within fourteen days of the owner's acceptance of the contract. The deposit was to be held by the realtor, Jordan Baris, Inc.

On September 18, 1990, the Nwachukwus made out an $8,000 check to respondent and wrote "deposit" on it. The check was endorsed by respondent. It was then deposited in the WK 3 account. Prior to the $8,000 deposit, the WK 3 account balance was $2,312.23. From the funds in the WK 3 account, $10,000 was then transferred to the DeJoie Trust 5 sub-account to replace funds that had previously been taken from that account.

The Nwachukwus' closing took place on December 13, 1990. However, the seller's prior mortgage was not paid until January 28, 1991, after the Nwachukwus' funds had been replaced. The mortgage payoff check, made and signed by respondent, included additional per diem interest because of the late payment.

On January 23, 1991, respondent signed and endorsed a $9,000 business account check for "owner draw." The business check was used to obtain two cashier's checks, totaling $8,694.47, which were then deposited in the Trust 5 account. The deposit slip for the cashier's check stated, in respondent's handwriting, that the deposit was for the Nwachukwus.

Respondent testified that he received the $8,000 check from the Nwachukwus and endorsed it, but did not know at the time that the check had been deposited in a WK account. He claimed that he was also unaware that Hightower had taken his $9,000 "owner draw" check and used it to replace the Nwachukwus' funds. He further testified that, in preparing for the ethics hearing, he discovered that the $8,000 was not a deposit, but money to be paid to WK for repairs to the property.

Hightower testified that Mr. Nwachukwu came to respondent's office with the $8,000 check. Respondent endorsed the check and then returned it to Mr. Nwachukwu, who gave it to Hightower. According to Hightower, respondent was present when Mr. Nwachukwu gave the check to her and told her that $2,200 was to be used for repairs and $5,800 was to be placed in trust by WK for the deposit.[19] Hightower also testified that respondent was the settlement agent for the Nwachukwu closing and that he had personally made and signed the check to pay off the seller's prior mortgage because, by December 1990, he knew about the "problems" with his trust accounts and "he was writing out everything." Finally, Hightower

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[19] At the end of the hearing, respondent repudiated Hightower's testimony that he was present when Mr. Nwachukwu gave her the $8,000 deposit check. He reiterated his prior testimony that he was unaware that the check had been deposited to a WK account.

testified that the mortgage was not paid until January 28, 1991 because there had not been sufficient funds in the trust account to pay it.

There is correspondence between respondent and the seller's attorney concerning the $8,000 deposit balance. The seller's attorney repeatedly demanded that respondent forward the deposit to the real estate broker, as required by the contract. In three letters to the seller's attorney in November 1990, respondent repeatedly represented that he was holding the $8,000 deposit balance in escrow until the Nwachukwus authorized him to forward it to the broker.

The complaint charged that respondent knowingly misappropriated $8,000 from the Nwachukwus.

The Okoye Matter (Count Fourteen)

Respondent represented Oguguo Okoye in a personal injury claim, which was settled for $11,000. On August 18, 1988, respondent deposited the funds in the Trust 1 account. On August 19, 1988, he signed a check to himself for $2,000. There was a handwritten notation on the check stating "Dr. Okoye." On August 20, 1988, respondent signed a check to himself for $3,663. Again, the handwritten notation stated "Dr. Okoye." After those checks were written, there remained $5,337 in the trust account on behalf of Okoye. On September 28, 1988, respondent signed a check to Okoye for $7,202, $1,865 more than was on deposit for

Okoye. However, the Trust 1 bank account statements for September, October and November 1988 showed that there was always more than $1,865 in the entire account.

According to the auditor, the excess fee taken by respondent invaded other clients' funds in the trust account. However, the auditor did not identify the clients whose funds were invaded.

The auditor was given two client ledger cards for the Okoye matter, neither of which showed the $2,000 check to respondent. Both ledger cards indicated a positive balance in the trust account for Okoye. The original ledger card indicated that Okoye was still owed $22.70, while the second card indicated that he was owed $60.10.

Respondent testified that, when he had signed the $3,663 check, he had forgotten that he had already taken $2,000 from the Okoye funds. He further testified that he had sufficient funds of his own in the trust account to cover the $2,000 excess fee because the trust account contained unspecified fees owed to him from other client matters. Boateng testified that respondent frequently left his fees in the trust account.

Okoye testified that he was aware that respondent had received the settlement proceeds in August 1988 because respondent sent the settlement checks to him for his endorsement. At that time, he was residing in Washington, D.C. He told respondent that he would pick up his check when he came to New Jersey, which did not occur until September 1988. He did not experience any problem when he requested his check from respondent.

The complaint initially alleged that respondent knowingly misappropriated $3,663 from the Okoye funds. After the hearing, the OAE amended the complaint to allege a knowing misappropriation of $2,000.

* * *

The special master concluded the respondent knowingly misappropriated client trust funds and failed to cooperate with ethics authorities, in violation of RPC 1.15, RPC 8.4(c) and RPC 8.1, respectively. The special master also found that, in December 1988, when respondent received notice of the random audit, he embarked on a course of conduct designed to cover up the shortages in clients' accounts, presumably concluding that respondent's actions violated RPC 8.1(a) and RPC 8.4(c).

The special master found "not credible" respondent's assertions that Hightower had misappropriated the funds without his knowledge, that he did not know that Hightower was signing his name and her own name on trust account checks and that he had no involvement with WK. The special master recommended that respondent be disbarred.

* * *

It should be noted that respondent raised a constitutional challenge to the proceedings. He argued that the OAE had "targeted" him for a random audit because he is an African-American attorney. Because only the Supreme Court may decide constitutional challenges to ethics proceedings, the Board merely recognized that respondent properly raised and preserved his constitutional challenge for the Court's review. R. 1:20-16(f).

Respondent also argued that Judge Kimmelman, in Ross's civil accounting action, found that Ross had authorized respondent to pay the $5,000 repair escrow to WK and that equitable estoppel precluded the "relitigation" of the issue at the ethics hearing. However, the OAE was not a party to the civil action and the issues before Judge Kimmelman were not identical to the issues in this matter. Furthermore, Judge Kimmelman's finding was based, in part, on the false testimony of respondent and Hightower that the $5,000 had remained intact in the WK account. Moreover, even if Ross had authorized respondent to give the escrow funds to WK, there is no evidence that she authorized respondent and Hightower to use the funds for their own purposes. Therefore, the Board found that the doctrine of equitable estoppel was not applicable to the Ross matter.

* * *

Upon a de novo review of the record, the Board is satisfied that the evidence clearly and convincingly supports the special master's finding that respondent's conduct was unethical.

The special master correctly found that respondent was guilty of knowing misappropriation in multiple instances. However, there is no clear and convincing evidence that respondent knowingly misappropriated $2,000 from the Okoye funds, when he made out two checks in payment of his attorney's fees. The excess attorney fee could have been taken inadvertently. Furthermore, there is no clear and convincing evidence that respondent knowingly misappropriated $7,500 from Henderson, when he gave the deposit monies to WK. The contract provided that WK was to hold the $7,500 deposit for the Henderson/Ross real estate transaction. Henderson also testified that the deposit was to be held by WK. It is undisputed that the funds were dissipated after being deposited in the WK account. Respondent's actions in the matter were highly suspect and likely violative of the conflict of interest rules.[20] But the evidence does not clearly establish that respondent knowingly misappropriated the $7,500 deposit.

The evidence does clearly and convincingly demonstrate, however, that respondent was guilty of knowing misappropriation in the remaining twelve matters.

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[20] Respondent testified that he did not represent either of his two clients, Henderson or Ross, in the real estate transaction. He stated that he prepared the contract, at Hightower's request, and witnessed Henderson's signature on the contract. Furthermore, respondent testified, Ross had signed an agreement to give respondent a percentage of the sales price as a broker's commission. According to respondent, Ross had earlier signed a similar agreement with WK, but neither WK nor Hightower had a real estate sales license. Because the agreement with WK would not be enforceable against Ross, respondent suggested that Ross sign the agreement for him to receive the commission. He intended to remit the commission to WK. The complaint did not charge respondent with violations of the conflict of interest rules. Because the Board has found multiple instances of knowing misappropriation, it is not necessary to determine whether the complaint should be amended to conform to the proofs.

Respondent did not dispute that clients' trust funds were invaded and improperly used and that clients' funds were used to replace funds previously misappropriated from other clients. Respondent's defense was that his office manager/controller, Hightower, who is now his wife, misused the trust funds and that he was unaware of her misconduct. Hightower supported respondent's testimony that she concealed her actions from him.

Hightower's testimony is entitled to no weight. By her own admission, from at least 1988 through 1990, she invaded client trust funds to replace funds that she had previously taken. She also fashioned an elaborate scheme to conceal her misconduct. She testified that she repeatedly lied to respondent, with whom she had an intimate relationship, about her activities and kept from him records that would have disclosed these activities. She engaged in a check-kiting scheme that she purportedly revealed only after the scheme collapsed because of a $58,000 shortage in one of the bank accounts. According to her testimony, even after she told respondent about the scheme, she affirmatively misrepresented to him and his accountant that the check-kiting scheme only involved the business and WK accounts, not the trust accounts. Hightower also admitted that she created phony documents to convince a bank that the law firm had mistakenly stopped payment on a prior mortgage payoff check. She conceded that she created false client ledgers to mislead the OAE. She acknowledged that she intercepted checks because she knew that there were insufficient funds in the trust account to cover the checks. She also admitted that she lied when testifying in the Ross litigation. Although Hightower repeatedly testified that she could present specific documentary evidence - for example, that she had deposited additional funds in the Gonzalez sub-account - such

evidence was never forthcoming. Given her admittedly prolonged course of fraudulent activity and lying, Hightower's testimony is entitled to no weight.

Respondent contended that he was completely taken in by Hightower's lies. When respondent was repeatedly confronted with circumstances that would have caused any attorney to examine his or her trust records, he, according to his testimony, would merely ask Hightower for an explanation. He could not recall Hightower's various explanations, but remembered that he was satisfied with them at the time. By his own admission, even when he requested business and trust records from Hightower concerning questionable transactions, she would not bring him the records, but would reassure him that she had taken care of the matter. Respondent testified that, even after Hightower told him, in August 1990, that she had been kiting checks through his business account, respondent still believed her representations that his trust accounts were not involved.

Respondent's testimony with respect to his review of his business and trust account bank records was inconsistent. At one point, respondent testified that he "regularly" reviewed his bank records. Later, he stated that he would review them "at times." He testified that, when writing checks from his business account, he did not have to review the account to be sure that it had sufficient funds because he always had a general idea of what was in the account. Between May and August 1990, however, Hightower was able to kite in excess of $1.5 million through respondent's business account, allegedly without his knowledge, when his normal monthly business account deposits ranged between $16,000 and $55,000.

Respondent also testified that he did not know, until told by the OAE on November 5, 1990, that Hightower had been signing his name on trust checks since 1988. The auditor testified, however, that she told respondent, in January 1989, that she had found a trust check with Hightower's forgery of respondent's name and that respondent had assured her it would not happen again. Between June 1988 and July 1990, Hightower signed respondent's name on at least twenty-seven trust checks, totaling $38,452.54, for respondent's fees and costs. Hightower also signed respondent's name on trust checks to remit settlement funds to clients and to pay legitimate client expenses. The auditor compiled a "sampling" of such "Hightower checks" written against two of the trust accounts between June 1988 and July 1990. There were forty checks, totaling $221,905, including the checks for respondent's fees and costs. Particularly noteworthy are two checks signed by Hightower to pay off the outstanding mortgages for two different real estate closings. Given the magnitude of the activity, it is inconceivable that respondent was not aware of it.

The timing of the "Hightower checks" is also relevant. Frequently, respondent would sign a series of checks properly payable from a real estate closing or a personal injury settlement, then Hightower would sign an improper trust check from the same proceeds, followed by legitimate checks again signed by respondent. Yet, incredibly, respondent testified that he never noticed the preceding checks for the same matter. Furthermore, although respondent professed to be unaware that Hightower had remitted settlement funds to clients and had made necessary third-party payments from settlement and real estate closing proceeds, he never made a duplicate payment. In light of all of the above facts, it is

impossible that respondent could not have known, prior to November 1990, that Hightower was signing his name on trust checks.[21]

According to respondent, after Hightower told him about the check-kiting, in August 1990, he requested that his accountant, Boateng, audit the accounts. However, Boateng testified that, although he suggested an audit of respondent's accounts because he suspected that Hightower's check-kiting may have involved the trust accounts, respondent did not authorize the audit because of the cost and because of the OAE audit.

Boateng also testified that, by the end of October 1990, he had reviewed some of respondent's trust accounts, without respondent's consent, and had found that Hightower's moving of funds had invaded clients' trust funds. He claimed that he immediately informed respondent of his findings. According to Boateng, the OAE was not notified because, by that time, respondent "became aware that there could be ethical implications" and decided to retain an attorney.

Respondent's testimony that he was first told of the trust account problems by the OAE on November 5, 1990 is inconsistent with Boateng's testimony that he told respondent of the involvement of the trust accounts by the end of October 1990.

Respondent asserted that Hightower had the experience and intelligence to carry out the elaborate scheme of client misappropriations and check-kiting without his knowledge, pointing to her graduate courses in business and finance at Columbia University and her work

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[21] Respondent also testified that he was unaware that Hightower had signed his name on his personal checks, including checks to pay taxes and his mortgage.

experience with the Federal Reserve Bank. The scheme required that Hightower keep track of the "real cash" in the various accounts and the "floating cash" in the accounts.[22] Yet, respondent maintained that the problems with all of the trust accounts were initially caused by a bank misdesignation of a business account as a trust account for a short period in 1989 and that all of Hightower's subsequent misappropriations were the result of her attempts to straighten out that account. Respondent's assertions in this regard are irreconcilable.

Furthermore, respondent's professed naiveté concerning his accounts during the relevant time period is at odds with the fact that, for many years, he kept his own books and records, apparently without a problem. Also, respondent was once a member of the district ethics committee and presented to the Supreme Court an ethics matter that resulted in a three-year suspension for the conversion of trust funds and inadequate recordkeeping.

Respondent's credibility was also adversely affected by his testimony that he had no involvement with WK and no knowledge of its operations. The documentary evidence proved otherwise. The evidence showed that respondent was one of the incorporators and a director of the company as well as its registered agent. He signed a corporate registration card for WK, in October 1988, as its president. He was a signatory on four of the five WK checking accounts. He signed the bank signature cards and corporate resolutions as the president of WK.

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[22] At the November 5, 1990 audit, the auditor found two adding machine tapes in the June 1990 business account bank statement. The tapes, which contained Hightower's handwriting, indicated that there were $13,278 "real cash" and $236,650 "floating cash" in the account.

At the hearing below and in his brief to the Board, respondent maintained that he had signed only two or three WK checks, when the evidence clearly showed otherwise. The evidence established that respondent signed WK checks, signed trust checks payable to WK, endorsed checks payable to WK, endorsed WK checks payable to him, made out WK deposit slips and received funds from WK. Respondent's personal funds, including loan proceeds, were deposited in WK accounts. In May 1989, a $1,500 check from Howard Savings Bank to respondent was deposited in the WK 2 account. In December 1989, a $15,498.16 check from Parkway Mortgage, the proceeds of a loan refinancing on property owned by respondent, was also deposited in the WK 2 account. In February 1991, the proceeds of another loan refinancing, $14,700, from Hudson City Savings Bank, was deposited in the WK 5 account. Yet, respondent professed no knowledge that these personal funds had gone to WK.

There is also evidence that respondent borrowed money prior to the first audit and moved the money through accounts to conceal the fact that the trust accounts were out of trust.[23] In December 1988, respondent borrowed $20,000, which was deposited in the Trust 2 account. On December 30, 1988, $15,000 was transferred to the business account, which had a negative balance prior to the deposit. On January 11, 1989, the day before the first audit, $13,000 was transferred to the Trust 3 account from the business account. After that transfer, the business account again had a negative balance. The day after the audit, January 13, 1989, the $13,000 was transferred back to the business account. Respondent signed that

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[23] Respondent contended that he had applied for the line of credit prior to his receipt of the audit letter; however, he did not present any evidence to support his contention.

$13,000 Trust 3 check transferring the funds back to the business account. Yet, respondent claimed that he had no knowledge that money was being moved among the accounts.

When the check-kiting scheme collapsed, in excess of $58,000 was owed to National State Bank. Respondent signed a demand note and mortgage for a loan to cover the overdraft. The mortgage covered two properties owned by respondent, one of which was his residence. Although respondent insisted that he was only supposed to be a guarantor of the loan, he signed the documents as WK's president.

Respondent's position that he was not involved with WK and had no knowledge of its operations is not credible because the documentary evidence established that he had an on-going involvement in WK. Even after he admittedly knew of Hightower's use of WK to misappropriate trust funds, he still vouched for WK. By letter dated November 19, 1990, respondent advised Moore's new attorney that WK had assisted Moore in obtaining a mortgage and that Moore had agreed to pay WK $1,500. Respondent then stated that WK was a financial services company and that "we routinely refer clients to [WK] in the normal course of business."

Respondent's testimony about the individual matters is also lacking in credibility. For example, in the Mattox 1 matter, respondent testified that Mattox authorized him to release $2,500 from a repair escrow to WK to pay Hightower and White for their services in obtaining a mortgage for Mattox. This testimony is not credible for several reasons. First, the expense was not shown on the closing statement. Second, the closing statement showed

that a mortgage broker, Time Mortgage, was paid $2,470 from the closing proceeds.[24] Third, the check to WK was not listed on respondent's client ledger cards. Fourth, respondent ultimately repaid Mattox the entire $9,000 escrow. Finally, there was no explanation as to why respondent did not release the escrow to Mattox directly from the Trust 1 account on November 23, 1988, if Citicorp had authorized the release of the escrow. There was no legitimate reason for the escrow funds' move from the Trust 1 account to the Trust 2 account one month after the escrow had allegedly been released, and then to the Trust 3 account before they were ultimately given to Mattox.

With respect to the Mattox 2 matter, respondent testified that Hightower deposited the first insurance check ($19,021.10) in the WK 2 account in error. However, respondent made out the deposit slip, not Hightower. Furthermore, respondent was paid his legal fee from the WK 2 account. Respondent claimed that he discovered that the funds had been deposited in the WK 2 account on February 28, 1990, when the fire adjuster demanded immediate payment for his services. Respondent then wrote a WK check to the fire adjuster. Instead of immediately transferring the funds to a trust account or writing a check to Mattox, respondent purportedly told Hightower to disburse the funds to Mattox. He then did nothing to ascertain that the funds had actually been disbursed, in accordance with his direction. According to respondent, he did not know that the funds had not been disbursed to Mattox, even though a

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[24] Time was actually paid only $1,543.75 and respondent received $463.12 as a "forwarding fee."

$3,148.80 WK check, which contained the notation "Citicorp Mortgage Payment Mattox," was later deposited in his business account.

Respondent also testified that he had no knowledge of a second check ($9,800) from Mattox's fire insurance company. On March 16, 1990, that check was also deposited in the WK 2 account. Respondent's claimed lack of knowledge of the second check is not credible. He was representing Mattox in the matter. He had to know that she was due additional insurance payments. Also, Hightower wrote two checks (totaling $7,100) to respondent from the Mattox funds in the WK account. The checks were deposited in the business account. According to respondent, even after Hightower requested, on April 4, 1990, that he issue a $2,720 business account check to Mattox to replace a "bounced" check, he still did not review the accounts, but merely asked Hightower questions and was assured that she was "taking care of it."

Respondent's testimony with respect to the $17,000 WK 1 check to him from the Anderson funds was particularly implausible. Respondent was adamant that he did not give the $17,000 WK 1 check and his personal $13,000 check to his attorney as a deposit on his purchase of 16 Laventhal Avenue. He was also certain that he told his attorney that the two checks should not be deposited because there were insufficient funds in the accounts to cover the checks. Yet, respondent could not recall why he gave his attorney the two checks, totaling $30,000. Such selective memory is highly suspect. Furthermore, respondent's attorney testified that respondent told him that the $30,000 was the deposit for respondent's purchase of 16 Laventhal Avenue.

Respondent also gave conflicting testimony with respect to the $8,000 Nwachukwu real estate deposit. Initially, he testified that the Nwachukwus had not paid a deposit. Rather, they had given an $8,000 check to WK to be used, in part, for repairs to the property they were purchasing. According to respondent, once WK had completed the repairs, the balance of the money was to be used for the deposit. Hightower testified that Mr. Nwachukwu had given respondent the $8,000 check, which was payable to respondent and had the word "deposit" on it. Respondent immediately endorsed it, according to Hightower, and handed it back to Nwachukwu, then watched as Nwachukwu handed the check to Hightower. At the end of the hearing, respondent repudiated Hightower's testimony regarding his knowledge that the deposit check had been give to Hightower. In several letters to the attorney for the sellers of the Nwachukwu property, respondent had represented that he was holding the $8,000 deposit and would remit it to the proper escrow holder, the broker, when authorized to do so by his client. Respondent made those representations after the $8,000 check had been deposited in the WK account and dissipated.

Respondent also professed no knowledge that the $8,000 deposit was replaced, in January 1991, by means of a $9,000 business account check that he had signed and endorsed for "owner draw." The business check was used to purchase two cashier's checks, which were then deposited in the trust account to replace the Nwachukwus' funds. This took place even after respondent admittedly knew that Hightower's misconduct involved his trust accounts. The documentary evidence and respondent's conflicting testimony in the Nwachukwu matter can lead to only one conclusion: namely, that respondent was a knowing

participant in the misappropriation, lied to the sellers' attorney to delay the remittance of the deposit to the broker and replaced the deposit with funds from his business account.

Finally, respondent's credibility was adversely affected by his contention before the Board that, despite the fact that trust funds had admittedly been misappropriated in numerous instances, there was not clear and convincing evidence that respondent had committed any misconduct, not even a failure to properly supervise an employee.

As found by the special master, respondent's testimony that he did not know for two years that Hightower was taking clients' funds and signing his name to trust checks was not credible. The Board agrees. At a minimum, respondent's conduct amounted to "willful blindness" that client trust funds were being invaded. In re Skevin, 104 N.J. 476, 486 (1986), cert. denied 481 U.S. 1028 (1987).

Respondent did not totally delegate his recordkeeping responsibilities. He has not claimed that he did not review his records. In his "requested findings of fact" submitted to the special master, respondent stated that he would review his trust and business accounts from time to time. Even a cursory examination, particularly of the accounts that had individual client sub-accounts, would have revealed the misappropriations. Moreover, there were numerous indications that there were problems in the trust accounts, including complaints from clients and other attorneys about client and escrow funds. Therefore, at the very least respondent was willfully blind to the fact that his clients' funds were being misappropriated. Such willful blindness satisfies the knowledge requirement for knowing

misappropriation and warrants disbarment. Id. at 486-487. See, also, In re Pomerantz, 155 N.J. 122 (1998); In re Irizarry, 141 N.J.189 (1995).

However, as found by the special master, the evidence goes beyond willful blindness – it establishes respondent's complicity in the misappropriations. There is clear and convincing evidence that respondent not only knew of the misappropriations, but that he was an active participant in the misconduct and in the activities undertaken to cover up the misconduct. Two clients testified that respondent asked them to sign false affidavits concerning the use of their funds. One of the clients actually signed the affidavit because respondent was her attorney and told her that he needed the statement. It was clear from her testimony that she did not understand the significance of what she was signing. The other client refused to sign the statement because it was not true.

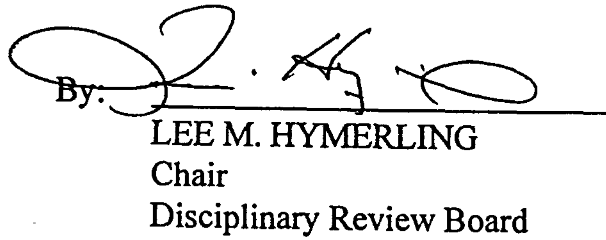
An "inculpatory statement is not an indispensable ingredient of proof" that a lawyer knowingly misappropriated client funds. In re Roth, 140 N.J. 430, 445 (1995). Rather, "circumstantial evidence can add up to the conclusion that a lawyer 'knew' or 'had to know' that clients' funds were being invaded." Ibid. (Citations omitted). Here, there is overwhelming evidence that respondent knew that trust funds were being invaded.

In a recent decision, the Court rejected an attorney's contention, supported by his wife's testimony, that he had not misappropriated client funds. In re Freimark, 152 N.J. 45 (1997). The attorney was disbarred for knowing misappropriation of the funds of four clients. Here, respondent is guilty of twelve instances of knowing misappropriation over a period of two years. His misconduct warrants disbarment. In re Wilson, 81 N.J. 451 (1979).

Therefore, the Board unanimously determined to recommend that respondent be disbarred from the practice of law.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 8/23/99



By: ______________________
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD VOTING RECORD

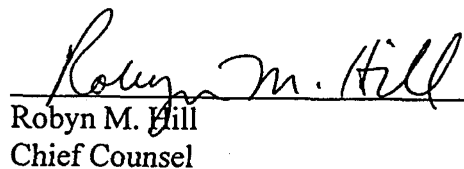
In the Matter of William Wright, Jr.
Docket No. 98-170

Argued: June 10, 1999

Decided: August 23, 1999

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling	x						
Cole	x						
Boylan	x						
Brody	x						
Lolla	x						
Maudsley	x						
Peterson	x						
Schwartz	x						
Wissinger	x						
Total:	9						



Robyn M. Hill
Chief Counsel