SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-097
District Docket No. XIV-2012-0272E

IN THE MATTER OF	
ROGER J. WEIL	
AN ATTORNEY AT LAW	

Decision

Argued: June 18, 2015

Decided: November 13, 2015

Christina Blunda Kennedy appeared on behalf of the Office of Attorney Ethics.

Gerard E. Hanlon appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey. This matter was before us on a recommendation for disbarment filed by Special Ethics Master, Miles S. Winder, III, based on his finding that respondent knowingly misappropriated escrow funds, a violation of RPC

8.4(c), and the principles set forth in In re Hollendonner, 102 N.J. 21 (1985).

For the reasons set forth below, we recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1979. On September 12, 2011, he was reprimanded for engaging in a conflict of interest for preparing a will for a client that named respondent's wife as a contingent beneficiary, when he should have refused the representation. In re Weil, 208 N.J. 179 (2011).

On June 13, 2013, respondent was censured for commingling personal and trust funds in his trust account and for preparing false HUD-1 settlement statements in 174 real estate matters, using inflated charges for surveys, costs, and recording fees. In re Weil, 214 N.J. 45 (2013).

Here, Evelyn Jones, respondent's former real estate paralegal, filed a grievance alleging, among other things, that certain clients were dissatisfied with respondent's delay in reimbursing their funds. Jones had worked for respondent from the end of August 2004 to February 6, 2012.

Jones was responsible for assisting respondent in all aspects of real estate closings, including communicating with all involved parties, preparing the HUD-1 settlement statements, and preparing

the disbursement checks for respondent's signature. Jones explained that, during a closing, she would draft the required disbursement checks, including a check to respondent for his fees. Respondent would place the fee checks in his office drawer. Jones also handled any escrow funds. She would ascertain the necessary payment amounts, prepare the checks, and obtain respondent's signature on the checks.

In 2008, prior to the instant matter, the Office of Attorney Ethics ("OAE") conducted an investigation into an anonymous grievance alleging that respondent inflated charges contained in a HUD-1 settlement statement. In the Matter of Roger J. Weil, DRB 12-356 (April 16, 2013) (slip op. at 2). This grievance resulted in respondent's censure in 2013. In the course of that investigation, the OAE requested respondent to produce client ledger cards and to account for the money held in his attorney trust account. Respondent directed Jones to "get the information" that the OAE had requested.

Because the current ethics charges stem from those client ledger cards and from the funds in respondent's trust account, background information about the prior OAE investigation is necessary.

Jones believed that "the OAE wanted to know what was in his trust account that were clients [sic] and whose clients they were and what was his that he left in there." She began searching for the files by referring to "sheets" that indicated there were outstanding escrows. Although many of the files did not contain HUD-1s, she was able to obtain them from respondent's locked files. Based on the files and HUD-1s, Jones prepared a chart, introduced into evidence as Exhibit P-6, reflecting all of the escrow funds held in respondent's attorney trust account from 1995 through January 19, 2009.

Respondent provided the OAE with the chart that Jones had prepared. The chart indicated the closing date, file number, client name, address, reason for the escrow, amount, date released, and follow-up date for each transaction. If, however, Jones could not identify the exact purpose of the escrow, that column was left blank. According to Exhibit P-6, respondent was holding $402,932.32 in escrowed funds.[1]

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[1] Exhibit P-6 indicates a total of $416,432.32, but there is an entry entitled "RJW FEES-remain in," which respondent indicated were his funds and served as a "buffer" in his attorney trust account.

As to the requested client ledger cards, Jones explained that she recreated them for the open escrows because the originals were "smudged." She would then staple the original ledger card to her newly created handwritten ledger. Respondent also provided the OAE with the ledger cards re-written by Jones.

After compiling this information, Jones diligently worked to locate the individuals who were entitled to the escrow funds. Thereafter, in 2010 or 2011, at respondent's direction, she disbursed the remaining funds directly to respondent.

The working relationship between Jones and respondent subsequently deteriorated and, in January 2012, respondent accused her of stealing money from his office. Her last day of employment with respondent was February 6, 2012. She claims that she voluntarily left his office after being falsely accused and that she was "sick because [her] nerves were so bad."

According to retired OAE Disciplinary Auditor Glen Nicholas Hall, respondent's fees in a real estate transaction were distributed as part of the closing, not as a separate bill. Although respondent issued the checks for his fees, he did not cash them contemporaneously. Thus, in 2008, the bank reconciliations reflected about 360 outstanding checks, which amounted to approximately $608,000. For this conduct, respondent

admitted to commingling funds. At some point, he removed all of the commingled fees from his trust account.[2]

During the instant investigation, OAE Disciplinary Auditor Steven Harasym asked respondent to produce an updated list of escrow funds, client ledger cards, and client files from 2004 through 2011. Respondent told Harasym that the 2004 client files and ledgers had been destroyed because of the age of the files and that the documents from 2005 to 2011 were lost in a flood.

Harasym then obtained the bank records for respondent's attorney trust account by subpoena and compared the cancelled checks that he received in the subpoenaed documents to Exhibit P-6, the list of escrowed amounts that respondent had previously provided in connection with the earlier investigation. Harasym determined that, in 2010, respondent had disbursed $56,286.23 of those funds to himself. Harasym prepared a chart, Exhibit P-10, reflecting these disbursements, which also included the information that respondent had provided in Exhibit P-6 as to the details of each of the escrows, along with the dates respondent issued the checks to himself.

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[2] In the Matter of Roger J. Weil, Docket DRB 12-356 (April 16, 2013) (slip op. at 14-15).

As noted earlier, Exhibit P-6 did not identify a purpose for every escrow item. As a result, Harasym determined that, even with the removal of those unidentified purpose items, respondent still disbursed $11,418.92[3] to himself, from funds clearly identified as escrow monies for a stated purpose.

Further, Harasym noted that the amount respondent disbursed to himself was equal to the amount identified as being held in escrow. For example, as of November 7, 2000, respondent held $932.05 for client number 4137, Nievis, for the purpose of "Payoff credit." On December 14, 2010, respondent disbursed to himself $932.05 by check number 58862 with the client reference of Nievis and the memo notation "Release escrow."

During the investigation, Harasym asked respondent to explain the disbursement of these funds to himself. Respondent failed to provide any explanation, except to say that "all escrowed monies were released to the clients and all the monies retained by [r]espondent were owed to him." The complaint charged respondent with a violation of RPC 8.1(a) based on this alleged misstatement that respondent made during the investigation, knowing that he had taken as fees funds that were escrowed for a stated purpose.

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[3] The actual total of these twenty-six checks is $11,418.99.

Harasym asked respondent for proof that the 2004 through 2011 files had been destroyed in a flood. Respondent provided a claim form and photographs he had submitted to his insurer, New Jersey Manufacturers Insurance Company. Respondent had not identified client files as part of his insurance claim, which was confirmed by the insurance adjuster, who also testified. Respondent explained that he had not done so because the files had no monetary value and because he already had reached his policy limit through his other claimed losses. Nevertheless, the OAE concluded that the files had not been destroyed in a flood and therefore charged respondent with a violation of RPC 8.1(a).

Harasym admitted that, because respondent failed to produce files or HUD-1 settlement statements, he was unable to verify respondent's claim that the monies had been released to the clients. Harasym had no way of contacting any of the clients or parties who should have received the funds to ascertain whether the obligations were satisfied.

At the hearing, respondent admitted that he had produced Exhibit P-6 to the OAE. He, however, denied reviewing the ledger cards that were sent, claiming that Jones had destroyed the originals. He also admitted that his fees were disbursed in the

normal course at the closing and that they were listed on the HUD-1 forms.

Respondent acknowledged taking the funds identified by the OAE as escrow funds ($56,868.23). He claimed, however, that he took the escrows based on his subsequent review of the original ledger cards, from which he had concluded that the funds were not escrows but actually "[f]ees, costs, bank fees, things of that nature" to which he was entitled and, further, that the actual escrows already had been paid. Respondent also maintained that, had the funds actually constituted escrow monies, he would have discovered the failure to pay them through other means, "checks and balances." For example, if a water escrow had not been paid, one of the parties would have received a late notice and would have questioned him. He claims he never received any such inquiry or complaint.

During his testimony, respondent explained that, in January 2012, he had accused Jones of stealing money (approximately $15,000 to $20,000) from his office. Although he contacted the police, Jones was never charged. Contrary to Jones' testimony that she chose to leave respondent's employment, he claimed that he fired her. Jones filed both a wage and hour claim and a workers'

compensation claim. Respondent alleged that she did so out of anger for having been fired.

Respondent conceded that, at the time Jones prepared the submissions to the OAE in the prior investigation, there was no animus between the two of them.

The complaint alleged that respondent's distributions to himself in the amount of $56,286.23 constituted a knowing misappropriation of escrow funds and that the failure to promptly disburse these funds to his clients and/or third parties also amounted to a violation of RPC 1.15(b).

The special master concluded that respondent did not deny taking the escrowed money. He further rejected respondent's claim that he had not reviewed the original ledger cards when he supplied them to the OAE, but rather only when he made the distribution to himself. Here, the special master reasoned that when respondent provided those ledger cards to the OAE, he had "represented [them] to be a true picture of the status of his attorney trust account." If respondent later realized that he had produced to the OAE inaccurate ledger cards in the prior matter, he should have corrected that misimpression, but failed to do so. The special master concluded, thus, that respondent had violated RPC 8.4(c).

The special master further rejected respondent's claim that the escrow obligations already had been paid. Here, he noted that respondent had based that conclusion on his review of the original ledger cards he, himself, had provided to the OAE and that, instead of supplying proof of those prior payments to the OAE, respondent simply instructed Jones to pay him the amounts he had previously identified to the OAE as funds held in escrow.

While recognizing that the professional relationship between respondent and Jones had soured by the date of the hearing, the special master noted that at the time Jones prepared the documents for the original investigation, she and respondent had "a professional working relationship." Thus, the special master determined that respondent's argument that Jones had acted vindictively because he had accused her of stealing from his office did not render her incredible or otherwise affect her credibility.

In respect of his finding that respondent knowingly misappropriated escrow funds, the special master stated:

> It is a fact that the Respondent advised the OAE that as to the accounts set forth in Exhibit P-10 each were being held in escrow

> for various matters.[4] He did this in 2008 in response to the Ethics Complaint filed previously. During the year 2010 he disbursed to himself a series of checks totaling $56,868.23. All of these checks he had previously shown to the OAE as funds he held in his attorney trust account in trust for various purposes [sic] there is no doubt that these funds did not belong to [respondent]. The funds belonged to others.
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> I [] conclude on these facts by clear and convincing evidence that [respondent] knowingly misappropriated the funds in his attorney trust account in violation of RPC 1.15(a).
>
> [SMR9-SMR10.][5]

The special master did not specifically address the RPC 8.1(a) and RPC 1.15(b) charges. The special master recommended respondent's disbarment.

Following a de novo review of the record, we are satisfied that the special master's finding that respondent's conduct was

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[4] It appears that the special master intended to refer to P-6, which respondent had submitted to the OAE during its previous investigation. P-10 is the schedule of trust obligations prepared by the OAE auditor during the instant audit/investigation. As has been noted, Harasym incorporated the information from P-6 into P-10.

[5] "SMR" refers to the special master's report, dated March 24, 2015.

unethical is fully supported by clear and convincing evidence. Respondent took for himself funds that he knew belonged to others, knowing that he had no authorization to do so. His conduct thus amounted to knowing misappropriation.

The Court has described knowing misappropriation as "any unauthorized use by the lawyer of clients' funds entrusted to him, including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit there from." In re Wilson, 81 N.J. 451, 456 n.1 (1979).

In In re Hollendoner, 102 N.J. 21 (1985), the Court addressed an attorney's use of escrow funds, as distinguished from client funds. The Court concluded that "absent some extraordinary provision in an escrow agreement . . . it is a matter of elementary law that when two parties to a transaction select the attorney of one of them to act as the depository of funds relevant to that transaction, the attorney receives the deposit as the agent or trustee for both parties." Id. at 28. "The parallel between escrow funds and client trust funds is obvious. . . . So akin is the one to the other that henceforth an attorney found to have knowingly misused escrow funds will confront the disbarment rule of In re Wilson." Id. at 28-29.

Here, the evidence unquestionably establishes that respondent knowingly misappropriated escrow funds in the amount of $56,868.23 when he issued checks to himself from funds that he previously clearly had identified as escrow funds and at a time when he was not entitled to any fees. Respondent's former real estate paralegal, Jones, explained that respondent's legal fees already had been disbursed by check as part of every closing. This practice was further confirmed during the OAE's prior investigation, after which respondent admitted to commingling based on his failure to negotiate those very checks.

During the OAE's prior investigation, respondent produced both a chart, prepared by Jones, detailing the then current escrow balances as well as the accompanying client ledger cards, some of which had been re-written by Jones. Jones explained that she had based those re-written client ledger cards on the original cards reflecting the outstanding balances and that she had attached the re-written cards to the originals. The chart indicated basic information about the open client matters and, oftentimes, detailed the reason for the escrow. According to the chart, respondent then held $402,932.32 in escrowed funds.

Jones testified that she prepared that chart after thoroughly reviewing documents to determine the outstanding escrows,

including checking the original files and the HUD-1s. That detail on Jones' part notwithstanding, respondent argued that, when Jones prepared the chart (Exhibit P-6), she mischaracterized the escrow balances, which he now claims represent his fees. If respondent's testimony is accurate, Jones misclassified at least 73 different client matters, totaling $56,868.23, as escrow funds. Yet, as noted by the special master, respondent failed to produce any documents to support his conclusion that those funds belonged to him. Moreover, the special master noted, Jones had prepared these documents at respondent's specific direction and at a time when her relationship with respondent was not acrimonious and therefore at a time when she had no motivation to falsify any of the information in the documents she had prepared. Thus, the special master found Jones credible.

During the OAE's audit in this matter, respondent claimed that he was unable to produce any of the requested supporting documents because all of the relevant files either intentionally had been destroyed based on the age of the file or damaged by a flood. Nevertheless, the OAE was able to subpoena the bank records from the relevant time period and, as a result, discovered that for the year 2010, respondent had disbursed $56,286.23 of the escrowed funds directly to himself. Of that amount, the OAE

established that respondent had disbursed to himself twenty-six checks totaling $11,418.99 in the exact amounts shown on respondent's chart for escrow purposes and for purposes other than for legal fees or costs. Those disbursements ranged from $5.44 to $7,000, amounts more likely associated with the payment of utilities, taxes, and similar obligations, rather than fees. Despite ample opportunity to do so, respondent failed to provide any evidence, aside from his own self-serving testimony, that these disbursements represented his unreimbursed fees and/or costs. In the absence of such evidence, respondent's proposition, in this context, simply is not plausible.

Respondent's attempt to bolster his claim that he earlier had paid the expenses related to the escrows and, therefore, was entitled to those funds as reimbursement, also must fail as implausible. Respondent attempted to validate these disbursements by suggesting that had he failed to pay the expenses related to the escrows, that failure would have been discovered through other means. In other words, he explained, if a water escrow had not been paid, one of the parties would have received a late notice and would have questioned him. This contention, however, is not necessarily accurate. For example, if another party paid the expense, respondent would not have been notified of a deficiency.

And if respondent had issued payment in that circumstance, he would have received notice of overpayment — or his check would have been returned as an overpayment. Again, respondent failed to produce any documentary or other evidence, aside from his own self-serving assertions, that he had earlier paid the expenses relating to the outstanding escrows and that he was therefore entitled to the funds as reimbursement for those payments.

Respondent was not credible in other respects as well. For example, on the one hand, during the hearing, respondent claimed that Jones had destroyed the original ledger cards, thus preventing him from verifying the information previously sent to the OAE in the original investigation. Inconsistently, however, he later claimed that those same ledger cards were the very documents he had reviewed to determine that the remaining balances in the client accounts belonged to him.

The evidence produced by the OAE clearly established that respondent disbursed to himself escrow funds. That respondent was aware that he was taking funds that did not belong to him is undeniable. This conclusion is supported not only by the evidence, but also by the credibility determinations made by the special master, who was in the best position to assess witness credibility. We therefore defer to the special master with respect to "those

intangible aspects of the case not transmitted by the written record, such as, witness credibility . . . ." Dolson v. Anastasia, 55 N.J. 2, 7 (1969).

Additionally, the complaint charged that respondent violated RPC 8.1(a) by misrepresenting to the OAE that the disbursements to himself were for fees and that his files were destroyed in a flood. As to the misstatement related to the fees, the evidence also clearly supports a finding that respondent was well aware that the funds he distributed to himself were escrow funds.

We cannot make the same finding, however, in respect of respondent's statement that his files had been destroyed in a flood. Although the evidence supports an inference that the files were not destroyed in a flood, but rather that respondent was withholding documents he perceived as detrimental to his position, the evidence does not rise to a clear and convincing standard. Respondent provided a plausible explanation for omitting the files from his insurance claim – that is, that he already had reached his policy benefit limit and did not include the loss of files in his claim because it would not have changed that benefit.

Thus, we find that respondent violated RPC 8.1(a) for his misstatement to the OAE that the funds he disbursed to himself were fees and RPC 1.15(a), RPC 1.15(b), RPC 8.4(c), and the

principles set forth in In re Hollendonner, 102 N.J. 21 (1985) for his knowing misappropriation of escrow funds and for his failure to promptly disburse those same funds to the appropriate parties. We, therefore, recommend his disbarment.

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

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Roger J. Weil
Docket No. DRB 15-097

Argued: June 18, 2015

Decided: November 13, 2015

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost	X					
Baugh	X					
Clark	X					
Gallipoli	X					
Hoberman	X					
Rivera						X
Singer	X					
Zmirich	X					
Total:	7					1

Ellen A. Brodsky
Chief Counsel