SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-082
District Docket Nos. XIV-2015-0053E
and XIV-2015-0138E

IN THE MATTER OF	:
JACK S. COHEN	:
AN ATTORNEY AT LAW	:

Decision

Decided: November 17, 2016

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

This matter was before us on a certification of default filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). In addition to failure to cooperate with disciplinary authorities (RPC 8.1(b)), the complaint charged respondent with knowing misappropriation of client, trust, and law firm funds (RPC 1.15(a), RPC 8.4(b), and RPC 8.4(c), and contrary to the principles asserted in In re Wilson, 81 N.J. 451 (1979), In re Hollendonner, 102 N.J. 21 (1985), and In re Siegel, 133 N.J. 162 (1993)). For the reasons set forth below, we recommend

respondent's disbarment for the knowing misappropriation of client, escrow, and law firm funds.

Respondent was admitted to the New Jersey bar in 1993. At the relevant times, he was a partner in the Haddonfield law firm of Levy Baldante Finney Rubenstein Cohen & Chizmar (Levy Baldante firm).

Effective September 10, 2015, the Court temporarily suspended respondent from the practice of law. In re Cohen, 222 N.J. 574 (2015). He has no other history of discipline.

Service of process was proper in this matter. On October 26, 2015, the OAE sent a copy of the formal ethics complaint to respondent's home address, by regular and certified mail, return receipt requested. The letter sent by certified mail was returned, marked "UNCLAIMED." The letter sent by regular mail was not returned.

On November 23, 2015, the OAE sent a letter to respondent at the same address, by regular and certified mail, return receipt requested. The letter directed him to file an answer within five days and informed him that, if he failed to do so, the allegations of the complaint would be deemed admitted, the record would be certified directly to us for the imposition of a sanction, and the complaint would be deemed amended to include a charge of a violation of RPC 8.1(b).

The letter sent by certified mail was returned, marked "UNCLAIMED." The letter sent by regular mail was not returned.

On January 4, 2016, the OAE sent a copy of the formal ethics complaint to "a subsequent home address" provided by the U.S. Postal Service, by regular and certified mail, return receipt requested. The letter sent by certified mail was returned, marked "UNCLAIMED." The letter sent by regular mail was not returned.

On January 26, 2016, the OAE sent a letter to respondent at the subsequent home address, by regular and certified mail, return receipt requested. The letter directed him to file an answer within five days and informed him that, if he failed to do so, the allegations of the complaint would be deemed admitted, the record would be certified directly to us for the imposition of a sanction, and the complaint would be deemed amended to include a charge of a violation of RPC 8.1(b).

The letter sent by certified mail was returned, marked "UNCLAIMED." The letter sent by regular mail was not returned.

As of February 29, 2016, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified the record to us as a default.

According to the first count of the formal ethics complaint, between June 2012 and January 2015, respondent wrongfully obtained checks drawn on the Levy Baldante firm's New Jersey trust account,

its Pennsylvania trust account, and the "case cost account." Respondent deposited the checks into his personal accounts at Wells Fargo Bank. Respondent did not have the authority of the Levy Baldante firm or any of its clients or third parties whose funds were taken to utilize their funds in any way.

In total, respondent misappropriated, and converted to his own use, $352,398.39, as follows: $8,507 in law firm funds; $72,554.15 in New Jersey attorney referral fees to other law firms; $29,971.94 in Pennsylvania attorney referral fees to other law firms; $210,741.00 in New Jersey client funds; and $30,624.30 in Pennsylvania client funds. In a January 24, 2015 e-mail to his law partners, respondent admitted that he had "misappropriated funds" and that he understood the "implications of this."

Based on the above allegations, the ethics complaint charged respondent with having committed the following ethics infractions: (1) knowingly misappropriating trust funds, contrary to RPC 1.15(a) and the principles of In re Wilson, supra, 81 N.J. at 451, and In re Hollendonner, supra, 102 N.J. at 21; (2) committing criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in other respects; and (3) knowingly misappropriating law firm funds, contrary to RPC 8.4(c) and the principles of In re Siegel, supra, 133 N.J. at 162.

According to the second count of the formal ethics complaint, on May 8, 2015, the OAE informed respondent that a demand interview had been scheduled for June 9, 2015. On June 3, 2015, respondent informed OAE disciplinary auditor, Joseph Strieffler, that he wished to consent to disbarment and requested the necessary forms. The form was mailed to respondent the following day.

Respondent neither appeared for the demand interview nor returned the signed disbarment by consent form.

On June 30, 2015, the OAE rescheduled the interview to July 15, 2015. On the day before the interview was to take place, the OAE received a letter from respondent enclosing the completed disbarment by consent form. Respondent's letter stated that, on that same date, his attorney would send the OAE the required letter that must accompany the consent to disbarment form.[1]

The OAE did not adjourn the scheduled July 15, 2015 interview. Respondent failed to appear.

As of October 26, 2015, the date of the ethics complaint, the OAE still had not received a letter from respondent's attorney,

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[1] R. 1:20-10(a)(2) requires the submission of "[a] letter from the respondent's attorney certifying that an attorney has consulted with respondent and that, in so far as the attorney is able to determine, respondent's consent is knowingly and voluntarily given and that respondent is not under any disability affecting respondent's capacity knowingly and voluntarily to consent to disbarment."

which is necessary prior to the submission of the consent to disbarment form to the Court, pursuant to R. 1:20-10(a)(2).

Based on these allegations, the second count of the formal ethics complaint charged respondent with having violated RPC 8.1(b) "in that he failed to appear at the OAE for two scheduled interviews to provide information in connection with the OAE's investigation of his knowing misappropriation of trust funds."

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

In In re Wilson, supra, 81 N.J. 451 (1979), the Court described knowing misappropriation as follows:

> Unless the context indicates otherwise, "misappropriation" as used in this opinion means 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 therefrom.

Six years later, the Court elaborated:

> The misappropriation that will trigger automatic disbarment under *In re Wilson*, 81 *N.J.* 451 (1979), disbarment that is "almost invariable," *id.* at 453, consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the

> taking. It makes no difference whether the money is used for a good purpose or a bad purpose, for the benefit of the lawyer or for the benefit of others, or whether the lawyer intended to return the money when he took it, or whether in fact he ultimately did reimburse the client; nor does it matter that the pressures on the lawyer to take the money were great or minimal. The essence of *Wilson* is that the relative moral quality of the act, measured by these many circumstances that may surround both it and the attorney's state of mind, is irrelevant; it is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment. To the extent that the language of the DRB or the District Ethics Committee suggests that some kind of intent to defraud or something else is required, that is not so. To the extent that it suggests that these varied circumstances might be sufficiently mitigating to warrant a sanction less than disbarment where knowing misappropriation is involved, that is not so either. The presence of "good character and fitness," the absence of "dishonesty, venality, or immorality" – all are irrelevant. While this Court indicated that disbarment for knowing misappropriation shall be "almost invariable," the fact is that since Wilson, it has been invariable.
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> [In re Noonan, 102 N.J. 157, 159-60 (1986).]

Hollendonner and Siegel, respectively, extended the Wilson principle to include the misappropriation of escrow and law firm funds.

The alleged facts clearly and convincingly support a finding that respondent knowingly misappropriated client, escrow, and law firm funds. Without permission from any client, partner, or third party, he took client funds, law firm funds, and funds being held

for the payment of referral fees to third parties, knowing that he was unauthorized to do so. Respondent admitted, via e-mail, to his partners that he committed the defalcations. Respondent's conduct in this respect also violated RPC 8.4(b) and RPC 8.4(c).

Given the facts supporting the knowing misappropriation charges, and respondent's admission to those facts, we find that he knowingly misappropriated $352,398.39 in client, trust, and law firm funds.[2]

The alleged facts also support a finding that respondent failed to cooperate with disciplinary authorities, as, without explanation, he did not appear for two demand interviews. Accordingly, he violated RPC 8.1(b).

We recommend respondent's disbarment for knowing misappropriation of client, escrow, and law firm funds. Wilson, supra, 81 N.J. 455; Hollendonner, supra, 102 N.J. 21; and Siegel, supra, 133 N.J. 162. Accordingly, we need not consider the appropriate quantum of discipline for respondent's failure to cooperate with the OAE.

Members Hoberman and Rivera did not participate.

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[2] In reaching our determination, we did not consider the statements made in the consent to disbarment because a consent that has been rejected by the Court may not be admitted into evidence. R. 1:20-10(a)(3).

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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Jack S. Cohen
Docket No. DRB 16-082

Decided: November 17, 2016

Disposition: Disbar

Members	Disbar	Recused	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli	X		
Hoberman			X
Rivera			X
Singer	X		
Zmirich	X		
Total:	7		2

Ellen A. Brodsky
Chief Counsel