SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-179
District Docket No. XIV-2014-0672E

IN THE MATTER OF	
WILLIAM J. SORIANO	
AN ATTORNEY AT LAW	

Decision

Argued: September 14, 2017

Decided: November 29, 2017

Steven J. Zweig appeared on behalf of the Office of Attorney Ethics.

Lewis M. Markowitz 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 Master Edwin H. Stern, P.J.A.D. (ret.). The one-count complaint charged respondent with violating RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 (1979) and In re Hollendonner, 102 N.J. 21 (1985) (knowing misappropriation of client or escrow funds); RPC 1.15(b) (failing to promptly disburse funds to a third party); RPC 1.2(d) (assisting a client in conduct

the attorney knows is illegal, criminal, or fraudulent); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

For the reasons stated below, we, too, recommend disbarment.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1975. He has been disciplined twice previously.

On January 13, 2004, respondent received a reprimand for gross neglect and failure to safeguard funds, when he abdicated his responsibilities as an escrow agent for the purchase of a business, allowing the buyer, his client, to steal funds held for the benefit of the seller, as part of a lease-purchase agreement. In re Soriano, 178 N.J. 260 (2004).

On June 7, 2011, respondent received a censure for making a misrepresentation on a HUD-1 (a real estate document); failing to set forth, in writing, the rate or basis of his fee; engaging in a conflict of interest, by representing both the buyer and seller in a real estate transaction; and failing to promptly deliver funds to a client. In re Soriano, 206 N.J. 138 (2011).

This matter originally was scheduled for consideration at our June 2012 session, by way of a disciplinary stipulation between respondent and the Office of Attorney Ethics (OAE). During its preliminary review, the Office of Board Counsel (OBC) questioned an issue that was not addressed in the parties' submissions.

Specifically, the investigative report suggested that respondent might have misappropriated escrow funds, by disbursing $211,000 from mortgage proceeds to his clients, instead of satisfying a mortgage, as required by the new lender and as listed on the HUD-1 statement. On June 12, 2012, the OBC sent a letter to the parties, directing them to address that particular concern and adjourning the matter to our July 2012 session.

On June 20, 2012, the OAE sent a letter to the OBC, stating that, based on the concerns identified in its letter of June 12, 2012, the OAE was withdrawing the disciplinary stipulation for "additional consideration." The OAE then filed a complaint against respondent on August 5, 2013. The OAE further investigated respondent's conduct and, presumably, concluded that there was no misappropriation, given that the subsequent complaint did not include that charge.

That complaint was before us at our November 2014 session. After hearing oral argument, we again determined to remand the matter to the OAE for an investigation of whether respondent's conduct amounted to knowing misuse of escrow funds, in violation of In re Hollendonner, supra, 102 N.J. 21. It now returns to us with an allegation that respondent knowingly misappropriated escrow funds.

The facts of the matter essentially remain unchanged and undisputed. Respondent has admitted the facts in his answer to the complaint as well as in his testimony. They are as follows.

John Cherami was the owner of Bencar Construction, which was in the business of purchasing, renovating, and selling houses. Consistent with Bencar's business purpose, John and Angela Cherami purchased property located in East Hanover, New Jersey, for $380,000. Respondent represented them in that transaction. The Cheramis expected to sell the property for $620,000, after the renovations.

The Cheramis initially applied for a $1,225,000 mortgage loan from Emigrant Mortgage, using as collateral their residence in Oldwick, New Jersey, and the East Hanover property. Their intention was to close on the refinance loan, use the proceeds to pay off an existing mortgage on the Oldwick property held by Saxon Mortgage, and purchase the East Hanover property. The balance on the Saxon mortgage was $685,381.

The day before the scheduled closing, however, respondent and the Cheramis learned that Emigrant had approved only a $975,000 loan, resulting in insufficient funds to pay off the Saxon mortgage and purchase the East Hanover property at the same time. This development caused several problems because the mortgage commitment was to expire four days after the scheduled closing on

the East Hanover property, and the Cheramis needed to meet all of the contingencies in the contract to buy the property. According to respondent, there was no way to predict how the seller would react if the Cheramis could not consummate the transaction. Respondent acknowledged that, in hindsight, he should have advised the Cheramis to cancel the deal. However, he believed, at the time, that they had to proceed with the closings because John Cherami "basically needed this renovation to make money, that's what he does."

Respondent further testified that the Cheramis were confident that they would be able to secure a line of credit to cover the shortage of funds, because the appraisal valuations of the East Hanover property and the Oldwick residence exceeded two million dollars. Moreover, respondent testified that the Cheramis' mortgage broker, Sara Kiggundu, had assured them that she could obtain the additional funding within thirty days. He added that, "2007 was a time when [mortgage] money was flowing like crazy." He and the Cheramis expected that the $250,000 difference between $1,225,000 and $975,000 would be forthcoming within thirty days. Ultimately, the Cheramis were not able to secure additional funding.

On January 12, 2016, after we remanded this matter, the OAE spoke to Kiggundu, who denied having told respondent and the

Cheramis that additional financing would be available. The OAE investigator testified that, in Kiggundu's words, Emigrant was a "lender of last resort" and if borrowers could not qualify for the full loan amount from Emigrant, they would not qualify for credit with another lender.

Nonetheless, not having advised the Cheramis to cancel the East Hanover transaction, respondent proceeded to represent them at the September 24, 2007 closing, making a decision not to satisfy the $685,000 Saxon mortgage. On the closing date, respondent received a closing package from Emigrant requiring all existing liens to be discharged and removed at closing, leaving Emigrant in a first lien position. As part of the closing package, respondent executed a Certification and Loan Disbursal Authorization, indicating that the loan closed in accordance with those closing instructions. That was untrue. Respondent knew the Cheramis had insufficient funds to close on the Emigrant mortgage and purchase the East Hanover property, but went forward with the closing anyway.

Also on the date of the closing, respondent prepared and signed a HUD-1 Settlement Statement certifying that "[t]he Settlement Statement which I have prepared is a true and accurate account of the funds disbursed, or to be disbursed, by the undersigned as part of the settlement of this transaction." The

HUD-1 was false, because it showed that the $685,381 balance on the Saxon mortgage had been fully paid. It also listed $153,826 as "cash from borrower," the Cheramis, who brought no additional funds to the closing. Respondent knew that the HUD-1 included these misrepresentations, but signed it nevertheless. He did not satisfy the Saxon mortgage from the Emigrant proceeds, as he was required to do as escrow agent for the loan proceeds. Instead, the parties took a different course, with respondent's help, as follows.

On September 24, 2007, Emigrant wired $976,784 into respondent's trust account. Ocwen Loan Servicing, the seller of the East Hanover property, was paid $351,708, via respondent's attorney trust account check. Saxon Mortgage received no payment. From the Emigrant loan, respondent made additional disbursements, including $11,949 to the Township of Tewksbury, $11,350 to Century 21 Realty, $34,720 to The Mortgage Zone, and $4,120 to his firm, as legal fees.

As of October 12, 2007, $525,596 from the Emigrant loan remained in respondent's trust account. From those funds, respondent made the following disbursements:

- On October 18, 2007, $30,000 to John Cherami via attorney trust account check no. 116555 and

$30,000 to Theresa Carafagnini via trust account check no. 116556.[1]

- On November 8, 2007, $50,000 to John Cherami via attorney trust account check no. 116599.
- On November 26, 2007, $50,000 to John Cherami via attorney trust account check no. 116658.
- On December 21, 2007, $25,000 to John Cherami via attorney trust account check no. 116707.
- On January 2, 2008, $16,000 to John Cherami via attorney trust account check no. 116716.
- On January 28, 2008, $30,000 to John Cherami via attorney trust account check no. 116810.
- On February 15, 2008, $10,000 to John Cherami via attorney trust account check no. 116842.

The $211,000 disbursements to Cherami were used to renovate the East Hanover property, to make mortgage payments to Emigrant, and to pay down the Saxon mortgage. On February 15, 2008, after the last disbursement to Cherami, the Emigrant loan balance in respondent's trust account was $284,596. That balance remained untouched in respondent's trust account for two months.

The Cheramis refinanced the Emigrant Mortgage on the Oldwick and East Hanover properties, obtaining a loan from Eastern Savings Bank for $1,250,000. Respondent handled the closing. On April 21, 2008, Eastern wired $1,212,562 into respondent's trust account, bringing the trust account balance for the Cheramis to $1,497,158. On that same day, respondent wired Emigrant $1,010,232, in

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[1] Carafagnini, Cherami's mother-in-law, received $30,000 in repayment of a loan to Cherami to enable him to post bond with the municipality, prior to closing on the property.

satisfaction of its mortgage. Over the next several days, respondent made several other disbursements, including $27,750 to Attainable Equity Corp. and $3,940 to his firm, for legal fees.

On May 7, 2008, respondent wired $442,000 to Saxon, paying down that mortgage, but not paying it off, leaving a $783 trust account balance for the Cheramis.[2] On October 10, 2008, respondent took the $783 for his firm's fees.

Several months later, on August 11, 2008, the Cheramis sold the East Hanover property for $475,000. Respondent handled the closing. $408,355 was used to pay down the Eastern mortgage.

Due to a downturn in the economy, the Cheramis had trouble making the remaining payments on the Eastern mortgage. As a result, in May 2009, Eastern filed a foreclosure action against the Cheramis. In June 2009, Deutsche Bank Trust Company Americas, as Indenture Trust for Saxon Asset Securities Trust 2006-3, also filed a foreclosure action against the Cheramis, due to non-payment of the Saxon mortgage.

On October 26, 2010, in response to the actions brought against the Cheramis, respondent arranged for a $240,015 loan to them from Thomas and Leslie Sodano, his brother-in-law and sister-

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[2] The record does not reveal whether Eastern agreed to allow the Saxon mortgage to remain on the Oldwick property or whether Eastern even was aware of that mortgage.

in-law. Respondent testified that he had obtained his in-laws' loan to the Cheramis for two reasons: the Cheramis were in danger of losing their home, and respondent wanted to insulate himself from a malpractice suit. Respondent told the special master:

> If the Saxon mortgage wasn't paid in full . . . it would have brought [the Cheramis] down very quickly because they could not have worked anything out with Eastern Savings Bank if that bank's mortgage was still there. That's number one. Number two, I really wanted to avoid a really messy situation for my law firm because inevitably there would have been a malpractice complaint including the Cheramis and myself and whoever else they could muster. So, I felt it was prudent to do that.
>
> [T78-19 to T79-6.][3]
>
> [B]ecause I made a misrepresentation [on the HUD-1] that would be part after (sic) malpractice lawsuit for basically the damages that would flow from not paying the mortgage off.
>
> [T80-5 to 9].

The loan from the Sodanos to the Cheramis was not in writing. Respondent orally advised the Cheramis and the Sodanos to seek advice from another attorney about the loan, although he did not do so in writing. He did not obtain a written waiver from either party. Both the Sodanos and the Cheramis chose not to consult with

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[3] "T" refers to the transcript of the January 17, 2017 hearing before the special master.

another attorney. Respondent personally guaranteed the loan, in writing.

On October 26, 2010, Kozyra & Hartz, LLC, a law firm that respondent retained to work out the payoff of the Saxon mortgage, sent $240,015 to Ocwen, in full satisfaction of the loan.

Respondent testified that, after the Cherami transaction, he changed his real estate practices, and now relies on a title company as a settlement agent. He added that personal concerns, at the time, took a lot of his focus as well. His father was diagnosed with leukemia, in August 2007, and immediately began chemotherapy treatment. His father, also a lawyer in respondent's firm, would go to the office in the afternoons only, "put[ting] a little extra burden on [respondent] to make sure we were dotting our I's and crossing our T's." Respondent's father passed away in February 2008.

Respondent argues that his misconduct does not rise to the level of a knowing misappropriation, asserting that no money was taken for himself, except legal fees, and that "the client's monies" from the refinance were used for the client.

Respondent cites In re Susser, 152 N.J. 37 (1997), in support of the proposition that the early release of escrow funds to a party to the escrow agreement does not invariably result in disbarment, if the attorney has a reasonable belief that the

purposes of the escrow agreement have been met. In Susser, a portion of the escrow funds were disbursed to the attorney, a circumstance, respondent notes, not present here. Rather, respondent received none of the funds other than his legal fees.

In this vein, respondent notes that the disbursements he made were to, or on behalf of, the client while respondent awaited additional monies to pay off the mortgage. Respondent claims that he had a reasonable belief that the additional monies would be forthcoming, based on the appraisals of the properties, which amounted to more than $2,300,000, where the original loan was reduced from $1,225,000 to $975,000 just before closing. He asserted that, at that time, borrowing money was much easier, and that Kiggundu, the broker, had assured him that she could produce additional monies quickly.

Citing several other cases resulting in disbarment under Hollendonner, respondent attempts to distinguish each of them. Specifically, respondent emphasizes that the attorneys in those matters took escrow funds for themselves, whereas he took no more than the legal fees to which he was entitled. Hence, in conclusion, respondent simply states, "[t]his matter is not Hollendonner."

The OAE recommends respondent's disbarment. First, the OAE rejects respondent's contention that his trust funds were not subject to the escrow agreement. Because he was holding the

lender's funds in escrow, respondent had a fiduciary duty to disburse those funds in accordance with the HUD-1. Relying on In re Harris, 186 N.J. 44, (2006), In re Villoresi, 163 N.J. 85 (2000), and In re Iulo, 115 N.J. 498 (1989), the OAE contends that a failure to satisfy an outstanding mortgage in connection with a real estate transaction has been held to constitute knowing misappropriation of escrow funds.

Second, the OAE summarizes the law of Wilson and Hollendonner in connection with the specific intent of the attorney that will support disbarment in an escrow situation. Specifically, an attorney need not intend to "deprive the promisor of the escrow funds permanently. Rather, an attorney may be guilty of knowing misappropriation of escrow funds simply by (1) 'taking the [promisor's] money entrusted to [the attorney]'; (2) 'knowing that it is the [promisor's] money'; and (3) 'knowing that the [promisor] has not authorized the taking'." In re Noonan, 102 N.J. 157, 160 (1986). Respondent admitted the second and third elements. Moreover, the OAE maintains, the mere client authorization to disburse escrow funds will not save an attorney from a finding of knowing misappropriation. Indeed, the fact that one party to the agreement consented to the attorney's use of escrow funds is irrelevant. In re Frost, 171 N.J. 308, 324 (2000) and In re Dilieto, 142 N.J. 492, 506-07 (1995).

Third, the OAE argues that it matters not that respondent received no pecuniary gain from the disbursement of the escrow funds. The Court in Wilson was very specific on that point: misappropriation means the unauthorized use by the lawyer of client 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." In re Wilson, supra, 81 N.J. 451, 455, n.1.

Fourth, the OAE contends that respondent's reliance on the "Susser exception" is misplaced. In In re Susser, supra, 152 N.J. 37, 38, the Court explained that "an early release of escrow funds to a party to the escrow agreement does not invariably result in disbarment when the attorney has reasonable grounds to believe that the purposes of the escrow have been completed and the circumstances do not otherwise demonstrate that the attorney has 'made a knowing misappropriation' of the funds within the meaning of In re Wilson."

Here, the OAE argues, respondent could not have held a reasonable belief that the conditions of the agreement had been met. In fact, respondent admitted that he disregarded the escrow agreement in order to "help [his client] out of a jam."

Ultimately, the OAE argues that respondent is a highly experienced real estate attorney who made a conscious decision to

disregard his fiduciary obligation to the lender to pay off the existing mortgage, choosing instead to deliver those funds to an unauthorized person. His decision to do so violated the escrow agreement and exposed the lender and its successor to substantial risk of loss. Therefore, for the protection of the public, respondent must be disbarred.

* * *

In his report, Judge Stern incorporated his determinations from his first decision in this matter. The only issue that remained was whether respondent had committed knowing misappropriation.

Judge Stern accepted respondent's position that he expected additional financing for his client within thirty days. The only relevant issue for Judge Stern was whether Kiggundu's assurance of additional funding was material to the charge of knowing misappropriation. Reframing the issue, Judge Stern asked, "what is the impact of the expectation on the conduct of Respondent in closing without paying off the Saxon mortgage as obligated by the closing documents and as he certified he had done, breaching his closing obligation and distributing money to his client as he did?"

Judge Stern noted that, on the one hand, respondent knew he was closing with proceeds with which he was obligated to pay off

the Saxon mortgage. The money was meant to be safeguarded in escrow for that purpose. On the other hand, the closing proceeds went for the benefit of the Cheramis and Angela Cherami's mother, incidental to the "rehab" of the East Hanover property. Respondent gained no personal benefit from his conduct except, perhaps, keeping his client happy. Judge Stern found that respondent believed, in good faith, that the additional proceeds with which to pay off Saxon would be forthcoming. But the facts were kept from both Emigrant and Saxon, and remained so with respect to Saxon, even after the additional financing was not forthcoming and after the Eastern loan had been arranged.

Citing In re Noonan, supra, 102 N.J. 157, 160, Judge Stern determined that respondent's motives and lack of personal benefit were irrelevant. Further, the facts, even as detailed by respondent, revealed that "the funds were knowingly used in an unauthorized manner inconsistent with the settlement obligation in the absence of paying off the Saxon mortgage, and constitute a knowing misappropriation of escrow funds in violation of RPC 1.15(a) and In re Hollendonner, supra, 102 N.J. 21."

Judge Stern considered, but did not find, a negligent misappropriation, citing In re Konopka, 126 N.J. 225, 234 (1991), and reasoning that, although respondent may have been negligent in his beliefs in respect of future additional funding, he did not

deny that he acted knowingly and intentionally. Hence, the special master concluded that, unlike the instant matter, those cases in which premature release of escrow funds did not result in post-Hollendonner disbarment involved negligence or "reasonable grounds to believe that the purposes of the escrow have been completed" or satisfied. In re Susser, supra, 152 N.J. 37, 38. Here, Judge Stern determined that respondent used escrow funds, knowing that a party who had an interest in them had not authorized that use. Hollendonner, supra, 102 N.J. at 27. In fact, like Hollendonner, respondent expected receipt of additional funds to eventually cover the funds he used.

Finally, Judge Stern recognized that the grievance in this case was filed in December 2010, and has remained unresolved for over six years. To protect the public and to maintain confidence in the bar, respondent should have been disbarred long before now. Although, presumably, respondent has learned a lot and has committed no additional infractions in the intervening six-year period, those facts are irrelevant at this point, as Hollendonner recognizes no mitigating circumstances.

Therefore, Judge Stern recommended that respondent be disbarred.

* * *

Upon a de novo review of the record, we are satisfied that the special master's conclusion that respondent's conduct was unethical was fully supported by clear and convincing evidence. Specifically, the record supports the special master's findings that respondent violated RPC 1.15(a), RPC 1.15(b), RPC 1.2(d), and RPC 8.4(c).

On the HUD-1 for the closing of the Emigrant loan, respondent misrepresented that a portion of those proceeds would be used to pay off the Saxon mortgage and that his clients were bringing cash to the transaction. These misrepresentations constituted false swearing, a violation of RPC 1.2(d) and RPC 8.4(c).

Moreover, as Emigrant's fiduciary and holder of the loan proceeds in escrow, respondent was obligated to satisfy the $685,381 Saxon mortgage, as Emigrant required. He did not. Instead, he disbursed more than $211,000 to his client and $30,000 to his client's mother. The mortgage remained unpaid for over three years. All the while, Emigrant believed that the Saxon mortgage had been paid off and that Emigrant was in first position as lienholder on the Oldwick residence. By failing to promptly disburse those funds to Saxon, respondent violated RPC 1.15(b).

Three years later, when the foreclosure actions were instituted, respondent appreciated his dilemma. He feared a malpractice action against him for having failed to satisfy the

Saxon mortgage. He then arranged for, and personally guaranteed, a $240,000 loan from his sister-in-law and brother-in-law to the Cheramis. In the process, he engaged in a conflict of interest by representing both his in-laws and the Cheramis in the loan transaction, without observing the safeguards of RPC 1.7 and by signing the promissory note, thereby entering into a business deal with his in-laws, whom he represented in the loan transaction. Although respondent was previously charged with having violated RPC 1.8(a) in connection with these facts, that allegation was not included in the complaint now before us. Thus, we make no finding in that regard. See R. 1:20-4(b).

In sum, respondent failed to safeguard funds entrusted to him for particular purposes, thereby breaching his fiduciary duty to Emigrant; perpetrated a fraud on Emigrant, by disregarding its closing instructions and leading it to believe that the Saxon mortgage had been satisfied and that Emigrant had a first lien on the property pledged as collateral; assisted his clients in defrauding Emigrant; and made misrepresentations on the HUD-1 form by listing a $153,000 sum as cash from borrowers, when the Cheramis brought no funds to the closing, and by listing $685,000 as earmarked for the satisfaction of the Saxon mortgage, when the mortgage was not paid off.

The question remains whether respondent is guilty of knowing misappropriation, under Wilson, Hollendonner, and their progeny.

In Wilson, the Court described knowing misappropriation of client trust funds 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.
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> [In re Wilson, supra, 81 N.J. 455 n.1.]

Six years later, the Court elaborated:

> The misappropriation that will trigger automatic disbarment that is "almost invariable" . . . 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 was 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 . . . . The presence of "good character and fitness," the absence of

> "dishonesty, venality or immorality" – all are irrelevant.
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> [In re Noonan, supra 102 N.J. 157, 159-60.]

Thus, to establish knowing misappropriation, the presenter must produce clear and convincing evidence that the attorney took client funds, knowing that the client had not authorized him or her to do so, and used them. This same principle also applies to other funds that the attorney is to hold inviolate, such as escrow funds. In re Hollendonner, supra 102 N.J. 21.

In Hollendonner, the Court extended the Wilson disbarment rule to cases involving the knowing misappropriation of escrow funds. The Court noted the "obvious parallel" between client funds and escrow funds and held that "[s]o akin is the one to the other that henceforth an attorney found to have knowingly misused escrow funds will confront the [Wilson] disbarment rule." In re Hollendonner, supra, 102 N.J. at 28-29.

Thus, Hollendonner, stands for the proposition that an attorney who uses escrow funds, either for the attorney's benefit or the benefit of another, without obtaining the consent of the parties to the escrow agreement, will be guilty of knowing misappropriation and will face the Wilson disbarment rule.

Twelve years after Hollendonner, the Court decided In re Susser, supra 152 N.J. 37. In that case, Susser released to his client, a developer, funds held in escrow for repairs to be made

in one of the houses built and sold by the developer. Susser did not ask the other party to the escrow agreement – the buyer of the house – for permission to release the funds to the developer. Susser's defense was that the repairs had been substantially completed and that, in any event, the amount of the escrow exceeded the estimate for the repairs.

Susser had a very small interest in the developer's business. Finding that Hollendonner mandated that Susser be disbarred for his release of the funds to a business in which he had an interest, we recommended disbarment. Three members dissented, finding that Susser's interest in the business was so insignificant that it could not be said that he had profited from the disbursement in any way and that the premature release of escrow funds to a party to the agreement should be considered a breach of the escrow agreement, instead of knowing misappropriation, if the circumstances do not demonstrate malice on the attorney's part. The Court agreed with the dissent, noting that "an early release of escrow funds to a party to the escrow agreement does not invariably result in disbarment when the attorney has reasonable grounds to believe that the purposes of the escrow have been completed and the circumstances do not otherwise demonstrate that the attorney has 'made a knowing misappropriation' of the funds

within the meaning of [Wilson] and [Hollendonner]." In re Susser, supra, 152 N.J. at 38.

In this matter, respondent did not have a reasonable belief that the underlying escrow agreement had been satisfied and did not claim that he held such a belief. Rather, he candidly admitted that he believed that additional monies would be forthcoming, based on the appraisals of the properties, which amounted to more than $2,300,000. He thus made a conscious decision to help his clients by disbursing the funds to them or to third parties on their behalf, without the consent of all the parties who had an interest in the funds. This is precisely the behavior that Hollendonner and its progeny intended to prevent. Thus, respondent's reliance on Susser is misplaced.

Respondent attempts to distinguish his conduct from that of the attorney in Hollendonner by maintaining that he took for himself only the legal fees to which he was entitled and that he disbursed to or for the benefit of his client only those funds attributable to the purchase/refinance. Respondent's argument either ignores, or simply does not appreciate, the fact that these funds did not belong to his client. Rather, the subject funds were escrow funds respondent was entrusted to safeguard. Emigrant loaned the funds to respondent's client for the specific purpose of satisfying the Oldwick mortgage – not to use them as he saw

fit. Those funds did not convert to client trust funds simply on deposit.

Moreover, the fact that respondent did not use the funds for his own purposes is irrelevant. The Court has made clear that attorneys need not use funds for their own benefit to be guilty of knowing misappropriation. See In re Noonan, supra, 102 N.J. 157, 160; In re McCue, 153 N.J. 365 (1998) (as trustee of a trust with considerable assets, the attorney transferred $500,000 to another trust unrelated to the first trust; the attorney was found to have knowingly misappropriated trust funds, although the record contained no evidence that the attorney used those funds for his personal benefit; he was ordered, by a court, to return compensation he had distributed to himself, as trustee, in light of his fraud and negligence in administering the trust); and In re Gronlund, 190 N.J. 59 (2007) (attorney serving as escrow agent in respect of a discharge of mortgage transaction improperly disbursed $3,200 in escrow funds, despite knowing that conditions precedent had not been satisfied; we found that, although it was possible the attorney had not used the funds for his own benefit, it was clear that the funds were not used for their intended beneficiary, in violation of the terms of the escrow arrangement, a knowing misappropriation).

Respondent clearly and admittedly made a conscious decision not to pay off the Saxon mortgage, despite Emigrant's requirement that a portion of the loan be used for that purpose – and then he lied about it on the HUD-1. As a result, the Saxon mortgage was not satisfied for three years, until a foreclosure action was instituted, and Emigrant did not have first position as a lien holder during that time. Thus, based on the specific facts and on the above principles, it cannot be said, in this case, that respondent reasonably believed that "the purposes of the escrow [had] been completed." Rather, we view this as a clear and classic violation of the principles set forth in Hollendonner. Therefore, we recommend to the Court that respondent be disbarred.

Members Clark and Hoberman did not participate.

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

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of William J. Soriano

Docket No. DRB 17-179

Decided: November 29, 2017

Disposition: Disbar

Members	Disbar	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