

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 18-110
District Docket No. XIV-2016-0530E

In The Matter Of :
Pamela Terraine Lee :
An Attorney At Law :
:

Decision

Argued: June 21, 2018

Decided: September 18, 2018

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear, despite proper notice.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14(a)(4), after respondent was permitted to resign her license in New York, following the filing of a petition charging her with numerous instances of knowing misappropriation of client and escrow funds entrusted to her care in connection

with several real estate transactions. Respondent admitted, in the New York matter, that she could not successfully defend herself against the charges, and that she "willfully misappropriated or misapplied money or property in the practice of law," and violated the equivalent of New Jersey RPC 1.15(a) (knowing misappropriation).

We determine to recommend that respondent be disbarred for knowing misappropriation of client and escrow funds.

Respondent was admitted to the New Jersey bar in 1997 and the New York bar in 1996. She has no prior discipline in New Jersey.

On March 4, 2016, the Grievance Committee for the Ninth Judicial District of the Supreme Court of New York filed a verified petition against respondent, alleging numerous instances of misappropriation of client or escrow funds held in her attorney escrow account, the functional equivalent of a New Jersey attorney trust account. In 2013, respondent maintained one such escrow account at Wallkill Valley Federal Savings and Loan (Wallkill AEA).

A July 26, 2016 interim disciplinary order (the interim order) under which the New York authorities temporarily suspended respondent, required her to answer the verified petition, and appointed a special master for the disciplinary proceeding.

In an August 31, 2016 answer filed by her attorney, Chris McDonough, Esq., respondent admitted virtually all of the relevant facts contained in the verified petition, as follows.

CHARGES ONE THROUGH THREE

The August West Development, LLC Transactions

August West Development, LLC (August West), through its principal, Eli Mashieh, was the buyer in three separate real estate transactions in which respondent was attorney for the seller. Mashieh gave respondent down payments totaling \$9,500 for the transactions. Respondent failed to maintain the funds entrusted to her.

Specifically, on April 29, 2013, in connection with a real estate transaction for property in Brooklyn, New York, respondent deposited \$2,000 belonging to Mashieh and August West into her attorney business account at Citibank (Citibank ABA). The \$2,000 should have been deposited into her attorney escrow account. Two days later, the balance in the Citibank ABA had decreased to \$1,661.18.

On July 24, 2013, respondent deposited a \$4,500 down payment check from Mashieh into the Wallkill AEA, in connection with a Bronx, New York real estate transaction. At the end of July 2013, only one week later, the

balance in the Wallkill AEA was \$501.47, well below the amount respondent was required to hold on account of the matter.

On August 12, 2013, respondent deposited a \$3,000 down payment from Mashieh into the Wallkill AEA, in anticipation of settlement of a real estate transaction concerning property in Richmond Hill, New York. By the end of August 2013, respondent was entrusted with August West funds totaling \$7,500, yet the balance in the Wallkill AEA had fallen to \$5,813.93.

The verified petition alleged that, in the above three real estate transactions, respondent misappropriated client funds, in violation of New York RPC 1.15(a).

CHARGE FOUR

The Hollis, New York Transaction

In September 2012, as attorney for the sellers, respondent accepted a \$10,000 deposit from Adnan Matin for the purchase of real estate in Hollis, New York.

After Matin filed an ethics complaint, respondent failed to comply with New York ethics authorities' requests that she identify and document the account into which the funds had been deposited.

In this instance, respondent's answer admitted that, by reason of the foregoing, she failed to account for and/or failed to safeguard client funds, in violation of New York RPC 1.15(a) and RPC 1.15(c)(3).

CHARGE FIVE

The Wappinger Falls, New York Transaction

On August 12, 2013, respondent deposited \$9,000 into the Wallkill AEA, representing the buyer's deposit for the bank-owned "short sale" purchase of property in Wappinger Falls, New York. Anthony DeFazio, Esq. represented the buyer, Daniel McNamara. The balance in the Wallkill AEA, at the end of August 2013, was \$5,813.93, well below the amount required to be held on account of the transaction.

In late November or early December 2013, the bank canceled the sale, prompting DeFazio to request the return of the \$9,000 down payment. Respondent repaid the funds on March 6, 2014, by cashier's check from a Wallkill account other than the AEA.

The verified petition alleged that respondent misappropriated client funds, in violation of New York RPC 1.15(a).

CHARGE SIX

The Monroe, New York Transaction

On July 2, 2013, respondent deposited \$9,100 into the Wallkill AEA, representing Ashley Wilson's down payment for the purchase of property in Monroe, New York. The settlement did not take place because Wilson was unable to procure mortgage financing.

According to the verified petition, Wilson's attorney, Carol R. Mark, made several requests of respondent for the return of the deposit, a claim that respondent denied in her answer.

According to the interim order, by the end of July 2013, respondent had permitted the balance in the Wallkill AEA to fall to \$501.47, well below the \$9,100 required to be held on account of the Monroe, New York transaction. Nine months later, on April 4, 2014, respondent repaid the funds by cashier's check from another Wallkill account.

The verified petition alleged that respondent misappropriated client funds, in violation of New York RPC 1.15(a).

CHARGE SEVEN

The Queens, New York Transaction

On February 7, 2014, respondent deposited \$18,900 into the Wallkill AEA, representing the down payment of SHC Equities for the purchase of real

estate in Queens, New York. Respondent represented the seller, O. Orepitan.

According to the interim order, immediately upon her receipt of the \$18,900 deposit, and before the real estate settlement, respondent disbursed \$6,083.82 from the Wallkill AEA, for her own use, thereby invading client escrow funds.

Thereafter, between February 7 and April 11, 2014, when respondent closed the Wallkill AEA, she reduced the balance in that account to \$40.87, almost completely depleting the \$18,900 required to be held on account of the Queens, New York transaction.

Respondent repaid the down payment amount on August 13, 2014, by cashier's check drawn on an account at Hudson Valley Federal Credit Union (HVFCU). There is no record of a deposit of the \$18,900 down payment into the HVFCU account.

The verified petition alleged that respondent misappropriated client funds, in violation of New York RPC 1.15(a).

CHARGE EIGHT

The Brooklyn, New York Transaction

On February 7, 2013, respondent deposited \$10,000 into her Citibank ABA, representing the buyer's down payment for the purchase of real estate in Brooklyn, New York, for which respondent represented the seller. On the

deposit date, the prior balance in the Citibank ABA was -\$4,271.20. Thereafter, respondent made no disbursements on account of the Brooklyn, New York transaction, but failed to maintain a sufficient balance in the account to cover the buyer's funds. On October 8, 2013, the account was closed.

On August 13, 2014, in reply to a complaint filed by the buyer, respondent repaid the funds by cashier's check drawn on an account at HVFCU. There is no record that respondent ever deposited the down payment funds in that HVFCU account.

The verified petition alleged that respondent misappropriated client funds, in violation of New York RPC 1.15(a).

CHARGE NINE

The Sewer/Newbold-Ferguson Transaction

In 2014, respondent maintained an attorney escrow account at Citizens Bank (Citizens AEA). On September 8, 2014, she deposited \$519,753.50 into the Citizens AEA, representing the sale proceeds of property owned by Lucien Sewer and Straia Newbold-Ferguson.

Post-closing, an apportionment dispute between the parties required respondent to maintain the proceeds in escrow, apparently minus her allowable fee (\$3,500), which she disbursed on September 9, 2014.

Thereafter, between October 27, 2014 and April 20, 2015, respondent made disbursements and withdrawals, totaling \$44,750, from the Sewer/Newbold-Ferguson funds for her own purposes, thereby depleting the client funds and permitting the Citizens AEA balance to fall below the amount required to be held on account of the Sewer/Newbold-Ferguson real estate transaction.

The verified petition alleged that respondent misappropriated client funds, in violation of New York RPC 1.15(a).

CHARGE TEN

The 116-43 127th Street Transaction

On November 12, 2014, respondent issued Citizens AEA check number 194, payable to herself for \$1,200. In an October 21, 2015 letter to disciplinary authorities, she asserted that the check represented payment for legal fees in a transaction for property at 116-43 127th Street (no city or state specified). Similarly, on November 18, 2014, respondent issued check number 196, payable to herself, from the same AEA, for \$2,250, and again indicated to authorities that the check represented her fee for the 116-43 127th Street transaction.

When check number 194 was presented for payment, the balance in the Citizens AEA was \$510,930.85, representing funds belonging to

Sewer/Newbold-Ferguson. Check number 194 was unrelated to the Sewer/Newbold-Ferguson transaction. Likewise, when check number 196 was presented for payment, the balance of \$508,680.85 represented Sewer/Newbold-Ferguson funds. Check number 196 was unrelated to the Sewer/Newbold-Ferguson transaction. Indeed, respondent had no corresponding funds on deposit for either check number 194 or 196 at the time.

The verified petition alleged that respondent misappropriated client funds, in violation of New York RPC 1.15(a).

CHARGE ELEVEN

The 116-43 127th Street Legal Fees

As previously stated, respondent indicated that Wallkill AEA check numbers 194 and 196, made payable to herself in November 2014, and totaling \$3,450, represented legal fees for the 116-43 127th Street transaction.

On April 3, 2015, respondent deposited a \$1,000 check from DJ Home Improvement, into the Citizens AEA, representing the down payment for the 116-43 127th Street transaction. She also deposited a \$2,485 check from the same entity with the memo designation, "Attorney Fee, 116-43 127th St."

Thereafter, however, respondent issued a total of \$3,450 to herself, ostensibly for 116-43 127th Street legal fees, an amount that exceeded the \$2,485 deposited into the Citizens escrow account for legal fees.

The verified petition alleged that respondent misappropriated client funds, in violation of New York RPC 1.15(a).

CHARGE TWELVE

The 643 East 223rd Street Legal Fees

On November 3, 2014, respondent deposited a \$1,000 check from United Hering, LLC [sic] into the Citizens AEA. The memo line on the check indicated that it was for "643 E. 223rd St. [] DP."

On November 26, 2014, respondent deposited a \$1,800 check, drawn on a Signature Bank account, into the Citizens AEA. The memo line on the check indicated that it was for "643 E. 223rd Street." On that same date, respondent issued a \$1,800 check payable to herself, from the Citizens AEA. On December 1, 2014, respondent issued an additional Citizens AEA check for \$1,100, also payable to herself. In an October 21, 2015 letter to disciplinary authorities, she indicated that the latter check represented her legal fees for the 643 East 223rd Street transaction.

Respondent issued a total of \$2,900 as legal fees for the 643 East 223rd Street transaction, which exceeded the total funds on deposit in the Citizens AEA for the 643 East 223rd Street transaction.

The verified petition alleged that respondent misappropriated client funds, in violation of New York RPC 1.15(a).

CHARGE THIRTEEN

The 108 West End Road Legal Fees

On February 23, 2015, respondent deposited a \$2,000 check from Wayne and Colleen Karabinos into the Citizens AEA, representing a down payment for the purchase of "108 West End Road."

On April 20, 2015, respondent deposited a \$4,265 check from the attorney escrow account of Frederick D. Romig, Esq., into the Citizens AEA. The memo line on the check indicated, "Karabinos from Barrett."

In March and April 2015, respondent made several disbursements to herself from the Citizens AEA, as follows: on March 2, a \$1,000 withdrawal; on March 10, a \$1,000 check (number 203); on March 19, a \$1,000 check (number 126); on March 23, a \$500 check (number 205); and on April 20, a \$2,500 check (number 129). In an October 21, 2015 letter to disciplinary authorities, respondent stated that the disbursements represented the payment of legal fees for the 108 West End Road transaction. Yet, by March 19, 2015, no funds remained in the Citizens AEA on account of the 108 West End Road matter. Moreover, of the \$6,265 deposited in the Citizens AEA for the 108 West End Road transaction, \$2,000 represented a down payment.

The verified petition alleged that respondent misappropriated client funds, in violation of New York RPC 1.15(a).

According to the interim order, on April 25, 2014, respondent testified under oath before the New York Grievance Committee that she had linked a debit card to the Wallkill AEA, and that she had used it to make personal withdrawals from the account, as seen below.

CHARGE FOURTEEN

The Carroll Street Transaction

On June 11, 2015, respondent deposited a \$135,000 check from Jane E. Lessard and Martin Nunes, into the Citizens AEA. The funds represented their down payment for the purchase of property on Carroll Street, Brooklyn, New York.

On the deposit date, the Citizens AEA contained \$648,156.85. In addition to the Lessard/Nunez funds, respondent was required to hold \$519,753.50 for the Sewer/Newbold-Ferguson transaction, and \$50,000 for "Golam, Singh, Wade and Woodly." Thus, on June 11, 2015, respondent should have been holding \$704,753.50 in the Citizens AEA on account of these matters; however, the balance in the account on that date was only \$648,156.85. Therefore, the balance in the Citizens AEA was less than the amount she was required to hold.

The verified petition alleged that respondent misappropriated client funds, in violation of New York RPC 1.15(a).

CHARGE FIFTEEN

The 129-35 131st Street Transaction

On June 11, 2015, respondent deposited a \$10,000 check from Daljinder Singh into the Citizens AEA, representing the down payment for his purchase of "129-35 131 St."

On the deposit date, the Citizens AEA held \$648,156.85, at a time when respondent was also required to hold: \$519,753.50 for Sewer/Newbold-Ferguson; \$135,000 for Lessard/Nunez; and \$50,000 for Golam, Wade, and Woody. In all, respondent held \$648,156.85 at a time when she was required to maintain \$704,753.50 in the Citizens AEA. Thus, she permitted the balance in the Citizens AEA to fall below the amount required.

The verified petition alleged that respondent misappropriated client funds, in violation of New York RPC 1.15(a).

CHARGE SIXTEEN

The Laurelton, New York Transaction

On February 17, 2015, respondent deposited a \$10,000 check from Clayton and Samantha Wade, into the Citizens AEA, representing the down payment for the purchase of property in Laurelton, New York.

On the deposit date, the balance in the Citizens AEA was \$492,354.85. At the time, in addition to the \$10,000 for the Laurelton, New York

transaction, respondent was required to hold \$519,753.50 for the Sewer/Newbold-Ferguson transaction, for a total of \$529,753.50. Respondent, however, permitted the balance in the Citizens AEA to fall below that, by an amount not specified in the record.

The verified petition alleged that respondent misappropriated client funds, in violation of New York RPC 1.15(a).

CHARGES SEVENTEEN AND EIGHTEEN

The ATM Withdrawals and Debit Card Items

From February 2013 through February 2014, respondent used a debit card in conjunction with the Wallkill AEA to make cash withdrawals at ATM machines and for purchases at Enterprise Rent-A-Car, CVS Pharmacy, Pathmark, Macy's, and IHOP. The debit card disbursements were for respondent's own personal use, unrelated to any client matters.

According to the interim order, on April 25, 2014, respondent testified under oath before the New York Grievance Committee that she had linked a debit card to the Wallkill AEA, and that she had used it to make personal withdrawals from the account.

The verified petition alleged that respondent: (1) breached her fiduciary duty by making personal disbursements from an attorney special account (her Wallkill AEA), and/or misappropriating client funds, in violation of New York

RPC 1.15(a); and (2) failed to make such special account withdrawals by check, to a named payee, in violation of New York RPC 1.15(e).

* * *

In her answer to the petition, respondent denied that her actions in Charges One through Three and Five through Eighteen violated the New York RPCs as alleged. She did not deny the failure to safeguard funds allegation contained in Charge Four, the Hollis, New York transaction, violations of New York RPC 1.15(a) and RPC 1.15(c)(3).

During the pendency of the disciplinary matter, respondent sought to resign from the bar, a mechanism available to New York attorneys pursuant to New York's Uniform Rules for Attorney Disciplinary Matters, §1240.10.

In an April 19, 2017 affidavit in support of her application, respondent acknowledged that she was the subject of pending disciplinary charges; that she could not "successfully defend against the charges and allegations based upon the facts and circumstances of [her] professional conduct," which included "misappropriation, failure to account, [and] failure to disburse funds from escrow appropriately." In addition, three pending investigations in New York alleged failure to return funds held in escrow, failure to properly maintain an attorney escrow account, and failure to adhere to court directives.

Respondent further attested that, "while the [instant] proceeding does include charges that I willfully misappropriated or misapplied money or property in the practice of law, I have since provided proof relative to said charges that the parties have been made whole." Respondent also acknowledged that if her resignation were approved, it would result in an order of disbarment.

On August 2, 2017, the Supreme Court of New York, Appellate Division, Second Judicial Part, issued an opinion and order granting respondent's application and disbarring her, effective immediately.

The OAE sought respondent's disbarment for knowing misappropriation, relying on In re Wilson, 81 N.J. 451 (1979) and In re Hollendonner, 102 N.J. 21 (1985).

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (E).

"[A] final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." R. 1:20-14(a)(5). Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3). In New York, the standard of proof for determining an attorney's professional misconduct is a fair preponderance of the evidence. See In the Matter of Capoccia, 59 N.Y.2d 549 (1983). We note that, in this matter, respondent submitted her resignation, acknowledging that she could not successfully defend against the New York charges, including charges that she

"willfully misappropriated or misapplied money or property in the practice of law."

On sixteen occasions between September 2012 and April 2015, respondent took client or escrow funds, comprising buyers' deposits and proceeds of sale in real estate transactions, and converted them to her own personal use, without the authorization of the parties to do so. In all sixteen instances, the balance in her attorney escrow account fell below the amount she was required to maintain intact, on behalf of the particular transaction.

The two remaining transactions involved respondent's improper use of her attorney business account. In the August West Brooklyn transaction, she deposited a \$2,000 down payment into her attorney business account, and then misappropriated some of those funds. In the Brooklyn, New York transaction (charge eight), respondent deposited a \$10,000 real estate down payment into her attorney business account, which carried a -\$4,271.20 balance at the time, misappropriated the funds, and then closed the account.

Additionally, on an unspecified number of occasions, respondent used a debit card that she had improperly linked to her attorney escrow account, and made ATM cash withdrawals of client or escrow funds for her own purposes. She also used the debit card for purchases of services and products, for her own personal use, that were unrelated to the matters for which the funds had

been escrowed, including at Enterprise Rent-A-Car, CVS Pharmacy, Pathmark, Macy's, and IHOP.

Indeed, from October 27, 2014 to April 20, 2015 alone, respondent made \$44,750 in disbursements and cash withdrawals from the Sewer/Newbold-Ferguson funds – all for her own personal use.

Respondent also violated the recordkeeping rules when depositing escrow funds into her business account and linking a debit card to an attorney trust account, the New York equivalent of New Jersey RPC 1.16(d) and R. 1:21-6. She also failed to cooperate with New York ethics authorities in the investigation of the Hollis, New York transaction, a violation of RPC 8.1(b).

By far, however, respondent's most serious infractions involved her use of client and escrow funds, without the parties' authorization, for her own personal use. In New Jersey, the willful conversion of client or escrow funds, required to be held in the attorney's trust account, constitutes knowing misappropriation, violations of RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451, and In re Hollendonner, 102 N.J. 21, for which respondent must be disbarred.

In light of the above, we need not reach the appropriate discipline for respondent's lesser recordkeeping violations and failure to cooperate with

disciplinary authorities in the Hollis, New York transaction. We recommend her disbarment.

Member 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

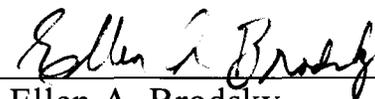
In the Matter of Pamela Terraine Lee
Docket No. DRB 18-110

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Disposition: Disbar

<i>Members</i>	Disbar	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer	X		
Gallipoli	X		
Hoberman			X
Joseph	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	8	0	1



Ellen A. Brodsky
Chief Counsel