SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 18-119
District Docket No. XIV-2017-0501E

In The Matter Of	:
Jack Barry Phillips	:
An Attorney At Law	:

Decision

Decided: October 26, 2018

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

This matter was before us on a certification of the record, filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The two-count formal ethics complaint charged respondent with the knowing misappropriation of "at least $65,146.84" in trust funds, a violation of RPC 1.15(a) (failure to safeguard funds) and the principles established in In re Wilson, 81 N.J. 451 (1979); RPC 1.15(c) (failure to keep disputed funds separate and intact until the dispute was resolved); RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or

fitness as a lawyer in other respects); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation; and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

We recommend respondent's disbarment for his knowing misappropriation of the funds at issue.

Respondent was admitted to the Florida bar in 1999 and to the New Jersey bar in 2001. At some point, he maintained an office for the practice of law in Haddonfield, New Jersey. Presently, he resides in Arizona.

Respondent has no disciplinary history in New Jersey. In October 2009, he was disbarred in Florida for abandoning a client and failing to reply to inquiries from state disciplinary authorities.

In 2016, respondent became ineligible to practice law due to nonpayment of the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection. He retired from the New Jersey bar in 2017.

Service of process was proper. Although the OAE had first attempted service in May 2017, the United States Postal Service returned all of the OAE's mailings, prompting the OAE to withdraw the certification of the record. Subsequently, on August 31, 2017, the OAE re-filed the disciplinary matter under a new docket number and, once again, attempted to serve respondent with the complaint.

On September 8, 2017, Deputy Ethics Counsel HoeChin Kim telephoned respondent after she had learned that he was in "retired" status with the Judiciary. Presumably, Kim asked respondent for a valid address for service of the complaint, but he stated that he was "still working on an address," and that he was currently residing in Florida. Respondent stated that he would provide an address.

Later that day, respondent left a voicemail message, stating that, because he had no address in Florida, the OAE should direct its written communications to P.O. Box 91 in Haddonfield. Respondent further stated that he would return to Haddonfield "after Hurricane Irma."[1]

On September 11, 2017, the OAE sent respondent a copy of the formal ethics complaint to the Haddonfield post office box address, by regular and certified mail, return receipt requested. On October 17, 2017, the certified letter was returned to the OAE, marked "unclaimed," "unable to forward," and "return to sender." The letter sent by regular mail was not returned. Respondent did not file an answer.

On October 20, 2017, the OAE sent a letter to respondent, at the same Haddonfield post office box address, by regular and certified mail, return

[1] Hurricane Irma passed through central Florida on September 10 and 11, 2017.

receipt requested. The letter informed respondent that, unless he filed an answer within five days, 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 violation of RPC 8.1(b).

On November 9, 2017, respondent sent an e-mail to Kim, in which he detailed his history of physical and mental health problems and homelessness. He claimed that, due to these issues, he was unable to participate in his defense and requested that the matter be continued until he could find a lawyer to represent him. Because of respondent's homelessness, he stated that "maybe the best place to communicate" with him was the Haddonfield post office box address.

Kim replied to respondent's e-mail about three hours later. She informed him, among other things, that a packet containing the complaint was awaiting his pick-up at the post office. She also informed respondent that, unless the OAE received notice, by December 1, 2017, that he had retained counsel or had applied for the appointment of pro bono counsel, the OAE would certify the record to us. The OAE heard nothing further from respondent.

On December 13, 2017, the United States Postal Service returned to the OAE the certified mailing of the November 9, 2017 service packet, marked

"return to sender" and "unable to forward." On December 21, 2017, the same service packet sent by regular mail was returned to the OAE with the same markings.

On March 5, 2018, the OAE served respondent with notice of the complaint via publication of a notice in the New Jersey Law Journal and the Courier-Post.

As of March 29, 2018, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified this matter to us as a default.

We turn to the facts alleged in the complaint. On June 28, 2010, respondent's former wife, Deborah Catherine Peck,[2] signed articles of organization for CJ-VJ Realty Associates (CJ-VJ), which were filed with the Florida Secretary of State. On that same date, Peck signed an enabling resolution, which authorized respondent "to take such action as is necessary to authorize and execute documents."

On June 29, 2010, Peck signed the CJ-VJ operating agreement, which identified Peck as the initial member and represented that she had made a $50,000 capital contribution to CJ-VJ. In addition, the agreement identified the

[2] On December 5, 2014, the Supreme Court of New Jersey disbarred Peck by consent.

ownership percentages of CJ-VJ as follows: 39% to Peck, 30% to Catherine Peck-Phillips (Catherine), 30% to Virginia Peck-Phillips (Virginia), and 1% to respondent.

Among other things, paragraph 15 of the operating agreement identified and described the fiduciary duties of CJ-VJ's members. In respect of the duty of loyalty, the agreement states, in pertinent part:

> A member's and manager's duty of loyalty to CJ-VJ REALTY ASSOCIATES, LLC is limited to the following:
>
> (a) To account to CJ-VJ REALTY ASSOCIATES, LLC and to hold as trustee for it any property, profit, or benefit derived by the member or manager in the conduct or winding up of CJ-VJ REALTY ASSOCIATES, LLC's business or derived from a use by the member of the LLC's property, including the appropriation of a LLC's opportunity
>
> . . . .
>
> [C¶18;Ex.11.][3]

On June 28, 2010, Peck signed an enabling resolution that empowered respondent to "authorize and execute documents." On an unspecified date, respondent replaced Peck as the LLC's managing member.

[3] "C" refers to the formal ethics complaint, dated May 3, 2017.

On September 27, 2013, the Florida Secretary of State administratively dissolved CJ-VJ, for failure to file an annual report or to pay the filing fee. On February 26, 2014, Peck filed a voluntary Chapter 7 petition in the United States Bankruptcy Court for the Southern District of Florida (bankruptcy court), which was consolidated with thirty-three other pending cases. Deborah C. Menotte, Esq., was appointed trustee for the group.

In Peck's bankruptcy petition, she represented that she owned a 39% interest in CJ-VJ, which, in turn, owned certain real property in Palm Beach County, Florida (Palm Beach property). Nearly a year later, on February 4, 2015, Oleg Ruddy and respondent, as the managing member of CJ-VJ, entered into an "'AS IS' Residential Contract For Sale And Purchase" of the Palm Beach property.

On February 17, 2015, respondent sent the following e-mail to the title agent and real estate broker, who had inquired about an operating agreement for CJ-VJ:

> Statement regarding operating agreement. Florida does not require an operating agreement, and since this is just an LLC within the family, we never made one. Deborah Peck is my ex wife and the other two members are our children.
>
> [C¶21;Ex.15.]

Because CJ-VJ did have an operating agreement, the complaint alleged that respondent's statement in the e-mail was not accurate.

On February 19, 2015, the CJ-VJ–to-Ruddy transaction took place. Respondent signed the settlement statement as the duly appointed managing member of CJ-VJ, "a dissolved Florida limited liability company."

Ruddy paid $145,000, of which $115,557.84 was due to CJ-VJ. Prior to, and on the day of the closing, respondent maintained both an attorney trust account and a personal account at PNC Bank. On February 18, 2015, the day before the closing, respondent opened a third account at PNC Bank, which the complaint refers to as a business account. Although the business account was not a designated attorney trust account, respondent identified it as such in the wire transfer instructions for the CJ-VJ-to-Ruddy transaction. Thus, on February 19, 2015, the $115,557.84 in sale proceeds was wired into that account. The deed was recorded on February 23, 2015.

Between February 19, 2015, when the $115,557.84 was wired into respondent's newly-opened business account, and June 15, 2015, respondent drew down $42,500, in the form of nine withdrawals and thirteen transfers, in even-dollar amounts, ranging from $500 to $4,500. Of that amount, $20,000 was transferred into his personal account.

On June 15, 2015, respondent withdrew $72,146.84 from the business account and deposited it into his attorney trust account, increasing that balance from $10.81 to $72,157.65. A $1,767 balance remained in the business account.

By letter date June 19, 2015, Leslie Gern Cloyd, counsel for the Peck bankruptcy trustee, provided respondent with a copy of the deed, and requested that he remit the sale proceeds to her law firm. Cloyd warned respondent that, if he failed to contact her by June 24, 2015, the trustee would seek to have the bankruptcy court hold him in contempt.

Respondent did not reply to Cloyd's letter. He did, however, continue to draw down funds. On June 22, 2015, respondent transferred $1,200 from the business account to his personal account. On June 25, 2015, he withdrew $7,000 from his trust account and deposited it in his personal account.

On June 29, 2015, the trustee filed a motion to hold respondent in contempt. On July 14, 2015, respondent filed a "motion to continue," which was dated July 4, 2015. In the motion, respondent stated that

- he had never received notice of Peck's bankruptcy;
- the trustee had not contacted him previously or served him with a notice of claim;
- CJ-VJ, not Peck, owned the asset;

- Peck owned only a 19% interest, not 39%, in CJ-VJ, which had purchased the property in August 2010;
- because the sales proceeds were only $115,000, the trustee's share was $21,850, which he would forward at the court's discretion; and
- it would be impossible for him to travel to Florida because he lived in New Jersey and made little money.

[C¶31;Ex.18.]

Respondent did not send $21,850, or any other amount of funds, to the trustee.

As of July 4, 2015, the date reflected on respondent's motion to continue, his trust account balance was $65,146.84. Although Cloyd placed him on notice that the trustee had laid claim to the proceeds from the sale of the Palm Beach property, respondent continued to dissipate the monies. On July 13, 2015, he withdrew $500 from the business account and deposited it in his personal account. He also withdrew $5,000 from the trust account and deposited $2,500 in his personal account.

On July 14, 2015, the trustee instituted an adversary proceeding in the bankruptcy court against respondent, Catherine, Virginia, and CJ-VJ, seeking, in part, the sale proceeds and an injunction against any use of the monies. On July 23, 2015, respondent withdrew $5,000 from the trust account.

On July 24, 2015, respondent filed for Chapter 7 bankruptcy protection in the United States Bankruptcy Court for the District of New Jersey. On

August 27, 2015, the New Jersey bankruptcy court dismissed respondent's Chapter 7 case for failure to file a required document.

On the same date that respondent filed his bankruptcy petition, he transferred $60 from the business account to his personal account. He also withdrew $3,190 from the trust account, deposited $1,000 in his personal account, and obtained two cashier's checks with the balance.

Between July 28 and September 8, 2015, respondent withdrew $22,500 from the trust account. He also made a single $500 deposit into the account. Of particular note are two $5,000 withdrawals in August, $7,000 of which was deposited in respondent's personal account.

On September 10, 2015, respondent withdrew the $29,967.65 balance, thus zeroing out the trust account, and deposited the funds in his business account, which, prior to that transaction, had a -$2 balance.[4] On September 30, 2015, Cloyd filed a grievance against respondent, alleging that he had refused to turn over the sale proceeds to her.

By October 2, 2015, respondent had removed $10,000 from the trust account, $4,000 of which was transferred to his personal account. The business account balance was $19,963.65 at that time.

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[4] Although the bankruptcy court ordered respondent to explain the disposition of the $29,967.65, he did not comply with the order.

On October 6, 2015, the Florida bankruptcy court approved a stipulation of settlement between the trustee, and Catherine and Virginia, neither of whom had received any of the sale proceeds. Under the terms of the stipulation, Catherine and Virginia transferred to the trustee their 30% interests in CJ-VJ. Thus, the trustee now held a 99% interest in CJ-VJ, and respondent retained a 1% interest. By October 13, 2015, two $3,000 withdrawals had reduced the business account balance to $13,963.65.

On October 14, 2015, Cloyd informed respondent that she had obtained his PNC records, which demonstrated that the $115,557.84 in sale proceeds had been wired into the business account, which respondent had opened the day before the closing. Respondent continued to draw down the business account funds. By December 7, 2015, the balance in that account was $259.65.

On December 14, 2015, the bankruptcy court entered a $149,215.65 final default judgment against respondent, and ordered him to turn over the $115,000 to the trustee, among other things. Yet, as stated above, only $259.65 of the proceeds remained in the business account at that time. By March 10, 2016, service fees and a $200 transfer to respondent's personal account had reduced the business account balance to $17.65.

On September 26, 2016, Cloyd provided the OAE with information about the status of the adversary proceeding against respondent, including

respondent's appearance and testimony at an August 3, 2016 hearing in the bankruptcy court. According to the ethics complaint, at the hearing, respondent denied that, when he sold the Palm Beach property, in February 2015, he was aware that Peck had filed for bankruptcy protection a year earlier. He also claimed that, after he had received the proceeds, his daughters loaned him their share, but he never entered into any written agreement with them or had any e-mail communications with them about the loan. Respondent admitted that he had used all of the proceeds from the sale of the Palm Beach property for his personal expenses.

Respondent could not explain the $72,000 deposit into, and disbursements from, his attorney trust account. When asked about the disposition of the $29,967.65 that he had withdrawn from the trust account, respondent replied that he had deposited the monies in his attorney business account.

On August 17, 2016, following the hearing, the bankruptcy court ordered the payment of $4,455 in sanctions, in addition to $16,146.50 in sanctions that respondent was ordered to pay previously, along with the $149,215.65 judgment.

Respondent also was required to provide an explanation of the disposition of the $29,967.55 that he had withdrawn from his trust account on

September 10, 2015. Respondent failed to comply, and, on October 25, 2016, the court entered an order holding him in contempt and requiring him to comply with the previous order of the court.[5]

According to the complaint, by July 4, 2015, the date that respondent signed the "Motion to Continue," he was aware that the trustee was demanding the return of the proceeds of the sale of the Palm Beach property. Yet, he failed to keep intact those funds that he had deposited into his attorney trust account. Instead, as of July 4, 2015, the attorney trust account balance had decreased to $65,146.84 from the original deposit of $72,146.84. Between July 13, 2015 and September 8, 2015, respondent withdrew $35,690 from his attorney trust account, reducing the balance to $29,456.84.

On September 10, 2015, respondent zeroed out his attorney trust account by withdrawing the total balance of $29,967.65. On that same date, he deposited the monies in his recently-opened business account, and proceeded to spend them as well. By March 10, 2016, the account balance was $17.65. According to the complaint, respondent used the funds to pay for personal expenses.

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[5] As of the date of the ethics complaint, the adversary proceeding against respondent remained open.

Based on the above facts, the complaint charged respondent with knowing misappropriation of "at least $65,146.84" in trust funds, a violation of RPC 1.15(a) and the principles set forth in In re Wilson, 81 N.J. 451; RPC 1.15(c); RPC 8.4(b); and RPC 8.4(c).

As stated above, on September 30, 2015, Cloyd filed a grievance against respondent. On May 12, 2016, the OAE sent a copy of the grievance to respondent, by certified mail, return receipt requested and regular mail, and requested that he submit a written reply by May 27, 2016. Respondent did not comply with the request.

On June 30, 2016, the OAE sent a copy of the prior mailing to respondent, by certified mail, return receipt requested and by regular mail, and requested that he submit a written reply by July 15, 2016. On August 5, 2016, respondent telephoned the OAE and stated that he could not read the letter due to problems with his eyesight. Respondent explained that he was in Florida for Peck's bankruptcy case, and, thus, did not have the letter with him. Accordingly, he requested that the letter be sent to him via e-mail so that he could "blow up the text."

Due to the Administrative Office of the Court's (AOC) prohibition on the use of e-mail for confidential matters, the OAE offered to send the grievance

and exhibits to respondent on a CD/DVD. Respondent requested that the mailing be sent to a Haddonfield post office box.

On August 9, 2016, the OAE sent, by certified mail, return receipt requested, and regular mail, to respondent's Haddonfield post office box, a CD-R containing the entire ethics grievance. The OAE requested that respondent confirm receipt of the packet and set a deadline of ten days for him to submit a written reply to the grievance. On September 8, 2016, the OAE left a voicemail message on respondent's cell phone, stating that it had been thirty days since the OAE's last letter, with no reply from respondent. Further, the message advised, unless respondent returned the OAE's call that day, it would conclude its investigation without his input.

On September 13, 2016, respondent called the OAE, reported that he was having trouble "opening" the CD, and again, "asked for an email address." The OAE reminded him of the AOC's e-mail prohibition, but informed him that he could waive confidentiality, which respondent agreed to do. The OAE reiterated that, based on the allegations of the grievance, he would have to detail the disposition of the real estate proceeds, and explain "how he did not steal the proceeds [of the transaction] and the disposition of those proceeds." Respondent replied "[g]ood" and "thank you."

On September 20, 2016, at 6:28 a.m., respondent telephoned the OAE, and, again, requested e-mail addresses. Once again, he was reminded of the AOC's policy. At respondent's request, he was given the OAE's post office address. Three days later, respondent wrote to the OAE and requested an accommodation for his poor eyesight. He also waived confidentiality of the grievance.

In a series of e-mails, dated November 9, 2016, the OAE provided respondent with a copy of the grievance and exhibits, a September 26, 2016 letter transmitting the bankruptcy court's August 17, 2016 order, the transcript of the August 3, 2016 hearing, and an order filed on June 21, 2016. The OAE directed respondent to submit his written reply to the grievance by November 21, 2016. As of the date of the ethics complaint, May 3, 2017, respondent had failed to do so.

Based on the above facts, the complaint charged respondent with having violated RPC 8.1(b) and R. 1:20-3(g)(3).

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

Notwithstanding that Rule, each charge must be supported by sufficient facts for us to determine that unethical conduct has occurred.

We begin with the RPC 8.1(b) (failure to cooperate) charge. That Rule prohibits an attorney from knowingly failing to reply to a lawful demand for information from a disciplinary authority. Here, despite several opportunities and accommodations, respondent failed to reply to the grievance. Thus, he violated RPC 8.1(b).

Next, we turn to the charges relating to respondent's dissipation of the proceeds from the sale of the Palm Beach property. First, respondent was on notice that he had received the proceeds from the sale of the Palm Beach property in his capacity as a fiduciary. Paragraph 15.3(a) of the operating agreement imposed a duty of loyalty on the LLC's members and managers. This duty required the members and managers to account "and to hold as trustee . . . any property, profit, or benefit derived by the member or manager in the conduct . . . of [the LLC]'s business. . . . ." Thus, even if respondent did not act in his capacity as an attorney in respect of the CJ-VJ-to-Ruddy transaction, he was required, under the terms of the operating agreement, to hold the proceeds in trust for the LLC, in the fiduciary capacity imposed on him as either a member or managing member of CJ-VJ Realty Associates. See, e.g., In the Matter of Harry Dreier, Docket No. 93-404 (DRB March 21, 1994)

(slip op. at 13) ("[a]n attorney serving as a trustee is held to the same high standards as an attorney who is representing a client"); In re Dreier, 138 N.J. 45 (1994). Stated another way, attorneys must conform their conduct to the standards of the profession, even if their activities are not related to the practice of law. In re Genser, 15 N.J. 600, 606 (1954). Accord In re Alsobrook, 186 N.J. 65 (2006), DRB 05-237 (December 21, 2005) (slip op. at 22 n.7). Indeed, "[c]onduct by an attorney which engenders disrespect for the law calls for disciplinary action even in the total absence of an attorney/client relationship." In re Carlsen, 17 N.J. 338 (1955) (citing In re Howell, 10 N.J. 139 (1952)).

Second, notwithstanding respondent's professed ignorance of Peck's bankruptcy proceeding prior to July 4, 2015, when he filed the motion to continue the trustee's motion for contempt, respondent was aware that the trustee had claimed entitlement to one hundred percent of the proceeds from the sale of the Palm Beach property. By that time, however, he had depleted the $115,557.84 such that only $65,146.84 remained in his business account.

In In re Wilson, 81 N.J. 455 n.1 (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).]

Despite respondent's assertion that he alone was entitled to the proceeds, the operating agreement stated otherwise. Further, under RPC 1.15(c), once the trustee asserted a claim to the monies, respondent was obligated to segregate the funds until the interests of the parties were determined. By failing to segregate the funds, respondent violated RPC 1.15(c).

Moreover, once the trustee laid claim to the funds, not only was respondent obligated to segregate the monies, he was obligated to hold them intact. See, e.g., In re Quinn, 88 N.J. 10 (1981) (prior to the settlement of the attorney's client's personal injury case, the local welfare board notified him that it was asserting a lien against the proceeds; the attorney proceeded to spend the monies, alleging that his client had authorized him to take a loan; we determined that, even if his claim of a loan were true, the attorney's removal of funds from his trust account with full knowledge that a lien had been asserted against them was, on its face, fraudulent and deceptive and a knowing misappropriation of the monies; the attorney also knowingly misappropriated monies in other client matters; he was disbarred).

Thus, in this case, when respondent received the proceeds from the sale of the Palm Beach property, he held the monies in a fiduciary capacity under the terms of the operating agreement and, thus, had no right to dissipate the funds. Further, once respondent was on notice that the trustee had asserted a

right to the proceeds, his continued use of the funds for his personal purposes, without the consent of the trustee, constituted a knowing misappropriation of the monies and, thus, warrants disbarment. See, e.g., In re Frost, 171 N.J. 308 (2002) (attorney was disbarred for knowingly misappropriating escrow funds that he was holding to satisfy his client's workers' compensation lien; the attorney obtained his client's consent to borrow the funds and then used them, without obtaining authorization from the compensation carrier, which also had an ownership interest in the monies).

In In re Hollendonner, 102 N.J. 21 (1985), the Court extended the Wilson principle to 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, 102 N.J. at 28-29.

We recognize that the ethics complaint did not specifically charge respondent with having violated Hollendonner. Yet, R. 1:20-4(b) requires only that a complaint "set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct, specifying the ethical rules alleged to have been violated." The OAE's complaint satisfied R. 1:20-4(b). The complaint charged respondent with having violated RPC 1.15(a), which is the RPC

violated by an attorney who knowingly misappropriates client, trust, escrow, and law firm funds. The complaint also alleged "sufficient facts to constitute fair notice of the nature of the alleged unethical conduct," that is, that respondent had received funds from the sale of a property in which a third party, the trustee, had claimed an interest; and, further, he proceeded to spend those monies, despite his knowledge of the claim. Thus, we find that, under RPC 1.15(a), respondent knowingly misappropriated the funds claimed by the trustee.[6]

In addition to respondent's violation of RPC 8.1(b) and RPC 1.15(a), he violated RPC 8.4(c) when he misrepresented to the title agent and real estate

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[6] We are aware that our decision to find Hollendonner violations in this case, despite the absence of Hollendonner charges, may appear to be at variance with our determination for dismissal in another disciplinary case, In re Roberson, 210 N.J. 220 (2012). Similarly, in that case, the complaint charged a violation of Wilson, but not Hollendonner. In Roberson, we found that dismissal was required because a defense to a Wilson charge could vary greatly from a defense to a Hollendonner charge. In the Matter of James O. Roberson, Jr., DRB 11-262 (December 20, 2011) (slip op. at 17-18). The Court dismissed the charges against the attorney.

The difference between Roberson and this case is that respondent's defenses to the charges would be the same, whether he was charged with a Wilson violation or a Hollendonner violation. Specifically, the complaint charged respondent with the knowing misappropriation of trust funds. Because respondent had notice that he was being charged with the knowing misappropriation of trust funds, which he was holding in a fiduciary capacity, it cannot be said that his due process rights will be violated by a finding of knowing misappropriation under Hollendonner, rather than Wilson.

broker in the CJ-VJ-to-Ruddy transaction that there was no operating agreement. He also violated the Rule by knowingly misappropriating the proceeds from that sale after the trustee had laid claim to them.

We voted to dismiss the RPC 8.4(b) charge, however. That Rule prohibits a lawyer from committing "a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." Although, on the face of the complaint, it does not appear that respondent was ever charged with a crime based on his alleged knowing misappropriation of trust funds, this is not fatal to a finding that he violated the Rule. A violation of RPC 8.4(b) may be found even in the absence of a criminal conviction or guilty plea. See, e.g., In re Gallo, 178 N.J. 115, 121 (2003) (the scope of disciplinary review is not restricted, even though the attorney was neither charged with nor convicted of a crime).

However, the complaint is silent in respect of the nature of the criminal conduct. In the absence of a reference to the nature of the crime, we are not in a position to determine whether respondent's conduct was indeed criminal. Thus, we dismiss the RPC 8.4(b) charge.

To conclude, respondent knowingly misappropriated proceeds from the sale of the Palm Beach property, a violation of RPC 1.15(a). He also violated RPC 1.15(c), RPC 8.1(b), and RPC 8.4(c).

Thus, we recommend that respondent be disbarred, under RPC 1.15(a), for his knowing misappropriation of the aforesaid funds. Accordingly, we need not consider the appropriate quantum of discipline for his other ethics infractions.

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 Jack Barry Phillips
Docket No. DRB 18-119

Decided: October 26, 2018

Disposition: Disbar

Members	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