

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-340
District Docket No. XIV-2017-0160E

In the Matter of :
:
Stephen Robert Murphy :
:
An Attorney At Law :
:
:

Decision

Decided: April 30, 2019

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 formal ethics complaint charged respondent with violations of 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), RPC 1.15(a) (failure to safeguard funds), RPC 1.15(d) and R. 1:21-6 (recordkeeping violations), RPC 8.1(b)

(failure to cooperate with an ethics investigation), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

For the reasons set forth below, we recommend disbarment.

Respondent was admitted to the New Jersey bar in 1999 and the Pennsylvania bar in 1998. On September 8, 2017, he was temporarily suspended from the practice of law for failure to cooperate with the ethics investigation in this matter. In re Murphy, 230 N.J. 346 (2017). He remains suspended to date.

On August 25, 2014, respondent was declared ineligible to practice law for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (CPF). He remains ineligible to date.

Service of process was proper in this matter. On July 31, 2018, the OAE sent a letter and a copy of the complaint to respondent, by certified and regular mail, at his last known home address appearing in the attorney registration records. The certified mailing was returned marked "Return to Sender, Unclaimed, Unable to Forward." The regular mail was not returned.

On September 7, 2018, the OAE sent a letter to respondent, to the same home address, also by regular and certified mail, informing him that, if he did not answer the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record in the

matter would be certified directly to us for imposition of sanction, and the complaint would be amended to include a charge of a violation of RPC 8.1(b). The certified mail return receipt card was returned, signed on September 10, 2018, but the signature is illegible. The regular mail was not returned.

The time within which respondent may answer the complaint has expired. As of September 27, 2018, the date of the certification of the record, respondent had not filed an answer.

At all relevant times herein, respondent maintained the following accounts at TD Bank: an attorney trust account (ATA) and two attorney business accounts (ABA1 and ABA2).

In April 2015, Jason James Maddonni and his partner, Ryan Macartney (also spelled "McCartney" in the record), retained respondent to represent them in the purchase of the "Shore Road Tavern." The sale documents identified the seller as Michael Fiedler, Executor for the Estate of Kathleen Woelfel-Fiedler.¹

On April 28, 2015, Maddonni issued a personal check for \$20,000, payable to "Law Offices of Stephen R. Murphy, Esq.," representing the

¹ Despite respondent's ineligibility to practice law, effective August 25, 2014, the complaint did not charge him with practicing law while ineligible, in violation of RPC 5.5(a)(1).

required ten percent deposit for the transaction. On May 5, 2015, respondent deposited the check into his ATA. The \$20,000 deposit consisted of a bifurcated escrow: \$6,500 toward the purchase of the tavern real estate and the remaining \$13,500 for the purchase of the business and liquor license.

On August 28, 2015, Fiedler sent respondent an e-mail withdrawing the offer of sale, after which Maddonni requested the return of his \$20,000 deposit. Respondent, however, informed Maddonni that he was required to maintain the funds in escrow for potential litigation over Maddonni's alleged failure to complete the purchase. Thus, respondent was required to maintain the \$20,000 inviolate in the ATA pending the resolution of the matter, but failed to do so, as explained below.

On May 4, 2015, the balance in respondent's ATA was \$26,006.81. The OAE was unable to determine to whom the funds belonged on that date because respondent failed to cooperate with the ethics investigation. On May 5, 2015, respondent deposited Maddonni's \$20,000 check into the ATA, bringing the balance to \$46,006.81. Thereafter, from July 6 to July 27, 2015, respondent made three cash withdrawals totaling \$20,108, from the ATA, all of which were unrelated to the tavern purchase and were made without Maddonni's knowledge or consent. As of July 31, 2015, the ATA balance was

\$18,898.81, which represented a shortage of \$1,101.19 on account of the tavern purchase.

On September 21, 2015, respondent made a \$2,500 cash withdrawal from the ATA without Maddonni's knowledge or consent. As a result, the balance in the ATA on September 30, 2015 decreased to \$17,898.81, increasing the shortage on the account of the tavern purchase to \$2,101.19.

On November 24, 2015, respondent withdrew \$5,500 in cash from the ATA, again without Maddonni's knowledge or consent. The resulting ATA balance of \$12,398.81 represented a \$7,601.09² shortage on account of the tavern purchase.

According to the complaint, respondent's removal and use of the \$7,601.09 from his ATA constituted knowing misappropriation of escrow funds.

As of November 30, 2015, the balances in respondent's ABA1 and ABA2 were \$939.26 and \$378.88, respectively. On December 2, 2015, respondent deposited \$10,000 in the ATA, representing funds withdrawn from a TD Bank savings account belonging to either Angella Yang or Yongsu Chang (Yang).

² This figure should be \$7,601.19 but was misstated in the complaint.

On January 22, 2016, respondent sent Maddonni a \$13,500 ABA1 check, representing the return of the business and liquor license escrow. On January 25, 2016, respondent withdrew \$13,500 from the ATA and deposited it in ABA1. The December 2, 2015 \$10,000 deposit of Yang's funds had increased the balance in ABA1 from \$4,346.51 to \$14,346.51.

Respondent's January 22, 2016 cover letter informed Maddonni that the seller had terminated the business agreement on August 28, 2015, entitling Maddonni to the return of \$13,500, representing that portion of the escrow pertaining to the business and liquor license. Respondent further stated that, based on the seller's "threat of litigation," he intended to hold the remaining \$6,500 in trust and to return them to Maddonni on February 28, 2016.

Respondent did not return the remaining \$6,500 on February 28, 2016, as he had promised. Moreover, he failed to maintain those funds inviolate in the trust account.

As of February 29, 2016, respondent's ATA had a balance of \$1,898.81, representing a shortage of \$4,601.19 for the \$6,500 in escrow for the real estate portion of the tavern purchase. As of August 31, 2016, the balance in the ATA had fallen to \$98.81, increasing the tavern purchase shortage to \$6,401.19. According to the complaint, respondent's removal and use of the \$6,401.19 constituted the knowing misappropriation of escrow funds.

Six months later, on February 22, 2017, in an interview with the then District IIIB Ethics Committee (DEC) investigator, respondent admitted that he had used the escrow funds for the tavern purchase "because he was having financial difficulty." About two weeks later, on March 6, 2017, respondent issued a \$6,500 ABA1 check to Maddonni. Although the complaint does not state how respondent replenished the \$6,401.19 in ABA1 prior to returning \$6,500 to Maddonni, respondent's ABA1 statement for March 2017 shows several deposits totaling \$19,270.50.

On April 5, 2017, respondent sent the OAE a copy of the January 17, 2017 reply to the grievance that he sent initially to the DEC, in which he explained the events of the failed tavern purchase. The letter, however, did not explain his use of the escrow funds. Moreover, respondent failed to include his client file or any of the many documents requested during the investigation. Respondent's letter to the OAE stated that, when the DEC investigator interviewed him on February 22, 2017, respondent had provided his ATA bank statements for the period April 2015 through February 2017.

On May 3, 2017, the OAE sent respondent a letter, by certified and regular mail, requesting the following additional information for the period of January 2015 through April 2017: three-way reconciliations of the ATA, client ledgers, and receipts and disbursements journals for the ATA and ABAs. The

letter further notified respondent of a May 25, 2017 demand audit at the OAE, and directed him to be prepared to explain his handling of the tavern purchase funds and his CPF ineligibility. Although the certified mail receipt was returned signed on May 8, 2017 by an individual named "Dodd," respondent failed to appear at the demand audit.

During a May 25, 2017 conversation with OAE personnel, respondent denied having received the May 3, 2017 letter, and requested an adjournment of the audit interview. By letter of the same date, the OAE adjourned the audit interview until June 6, 2017, at which time respondent was to appear at the OAE offices with the requested documents.

By letter dated June 2, 2017, respondent asked the OAE for a forty-five-day adjournment, which the OAE denied by letter, reiterating that respondent was required to bring the requested documents to the June 6, 2017 demand audit.

On June 5, 2017, an attorney e-mailed the OAE, confirming his representation of respondent and the OAE's agreement to adjourn the demand audit to June 27, 2017. On that same date, the OAE sent a confirming letter to counsel renewing the OAE's demand for the production of the previously requested documents by June 19, 2017, and suggesting that respondent be prepared on the audit date to answer questions about his CPF ineligibility.

Respondent failed to produce the requested records by June 19, 2017, prompting the OAE to send a June 26, 2017 letter to counsel, warning that, without respondent's appearance the next day, with the required documents, the OAE intended to move for respondent's temporary suspension pursuant to R. 1:20-3(g)(4). The next day, counsel informed the OAE that respondent would neither produce the requested documentation nor appear for the demand audit. As previously stated, respondent was temporarily suspended on September 8, 2017 for failure to comply with the OAE's requests for information about his handling of the tavern purchase and activities during his CPF ineligibility.

On September 28, 2017, the OAE again wrote to counsel, informing him that respondent had been temporarily suspended and that the OAE would oppose any reinstatement request without respondent's full cooperation in the underlying Maddonni investigation. The letter also requested the production of certain documents by October 13, 2017, and directed respondent to appear at the OAE's offices for a demand audit on November 28, 2017. Respondent failed to appear at the November 28, 2017 demand audit and never provided the OAE with an accounting for his use of the escrow funds.

The complaint charged respondent with recordkeeping violations under RPC 1.15(d) and R. 1:21-6(c), for his several cash withdrawals from the ATA, which R.1:21-6(c)(2) prohibits.

Finally, the complaint charged respondent with an RPC 8.4(c) violation "in that [he] represented he would retain the escrow deposit and instead, knowingly misappropriated escrow funds."

Following a review of the record, we find that the facts recited in the complaint support most, but not all, 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.

In April 2015, Maddonni and Macartney retained respondent to represent them in the purchase of a tavern business, liquor license, and related real estate. To that end, Maddonni gave respondent a \$20,000 deposit (\$13,500 for business and liquor license and \$6,500 for real estate), which respondent was to hold inviolate in his ATA pending the completion of the transaction.

In August 2015, the seller withdrew the offer of sale and Maddonni requested the return of the \$20,000 escrow. Respondent, however, had used a

portion of the funds for purposes unrelated to the transaction, without the consent of Maddonni.

The OAE investigation was stymied by respondent's refusal to produce bank and attorney records, such as receipts and disbursement journals and client ledgers. Those documents would have helped the OAE determine the exact nature of his use of the escrow funds. Nevertheless, it is clear from the balances maintained in respondent's ATA that he used most of Maddonni's funds for purposes unrelated to the tavern purchase.

From July 6 to July 27, 2015, respondent withdrew \$20,108 in cash. Although the ATA had a balance of \$46,006.81 after respondent's May 5, 2015 deposit of Maddonni's funds, by July 31, 2015, the ending balance in the ATA was only \$18,898.81, a shortage of \$1,101.19.

Between September 21 and November 24, 2015, respondent's cash withdrawals of another \$8,000 brought the balance in the ATA to \$12,398.81, representing a November 30, 2015 shortage of \$7,601.09, on account of the escrow for the business and liquor license portion of the tavern purchase. On November 30, 2015, the combined balance in ABA1 and ABA2 was only \$1,318.14. Therefore, any possibility that the escrow funds had mistakenly been placed in those accounts has been negated.

We find that respondent's removal and use of \$7,601.09 in escrow funds for his own purposes, without Maddonni's knowledge or consent, constituted a failure to safeguard client funds that he was holding in escrow and knowing misappropriation, a violation of RPC 1.15(a) and In re Wilson, 81 N.J. 451 and In re Hollendonner 102 N.J. 21.

On December 2, 2015, after invading Maddonni's funds, respondent replenished the ATA by depositing \$10,000 in funds belonging Yang. The complaint did not allege any wrongdoing related to that transaction. Apparently, the \$10,000 was sufficient to boost the ATA balance to \$14,346.51. Therefore, on January 22, 2016, respondent transferred \$13,500 from the ATA to ABA1, and sent Maddonni a \$13,500 check drawn on ABA1. Respondent's repayment of the \$13,500 does not mitigate his knowing misappropriation.

In addition, respondent misused most of the remaining \$6,500 escrowed for the purchase of the tavern real estate. As of August 31, 2016, eleven months after Maddonni requested the return of his escrow funds, the balance in respondent's ATA was a mere \$98.81, representing a shortage of \$6,401.19 on account of the tavern real estate portion. Respondent used those funds for purposes unrelated to the transaction, without the knowledge or consent of Maddonni. Not until March 26, 2017, almost two years after his retention, did

respondent return the remaining \$6,500 owed to Maddonni on account of the failed transaction. This conduct, too, constituted a failure to safeguard client funds that he was holding in escrow and knowing misappropriation, a violation of RPC 1.15(a) and In re Wilson, 81 N.J. 451, and In re Hollendonner, 102 N.J. 21.

Respondent also is guilty of recordkeeping violations (RPC 1.15(d) and R. 1:21-6(c)), inasmuch as he made impermissible cash withdrawals from the ATA.

Further, respondent failed to cooperate with the ethics investigation. Although he appeared for an interview with the DEC in February 2017, at which time he apparently delivered some bank records, thereafter he refused to produce attorney required trust and business account records, three-way reconciliations of his trust account, or the client file, or to appear at the OAE offices for a demand audit interview to explain his actions. Respondent's misconduct constituted violations of RPC 8.1(b).

We often find an RPC 8.4(c) violation in connection with a knowing misappropriation charge, based on the dishonest nature of using trust funds without consent. Here, however, the charge was that respondent "represented that he would retain the escrow deposit and instead, knowingly misappropriated escrow funds." Implicit in every escrow arrangement is the

notion that the escrowed funds will remain in escrow, pending the completion of the specified acts for which they are being held. The charge that respondent acted with deceit or dishonesty, or misrepresented his intentions to Maddonni by misappropriating them, is subsumed within the knowing misappropriation charge, and is, therefore, dismissed as duplicative.

For respondent's knowing misappropriation of \$14,002.28 of escrow funds held in the ATA for the tavern purchase, we recommend that he be disbarred, in accordance with Wilson, 81 N.J. 451 and Hollendonner, 102 N.J. 21.

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 Stephen Robert Murphy
Docket No. DRB 18-340

Decided: April 30, 2019

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:	9	0	0


Ellen A. Brodsky
Chief Counsel