Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-069
District Docket No. XIV-2017-0567E

In the Matter of	:
Alfredo Ramos, Jr.	:
An Attorney at Law	:

Decision

Decided: September 17, 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(b) (failure to promptly disburse funds to a third party); RPC 3.3(a)(5) (failure to disclose a material fact to a tribunal); RPC 8.1(b) (failure to disclose a fact in a disciplinary matter necessary to correct a misapprehension known by the person to have arisen in the matter and a failure to cooperate with

disciplinary officials); RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

For the reasons set forth below, we determine to recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 2007. On July 3, 2018, he was temporarily suspended from the practice of law in connection with the instant disciplinary matter. In re Ramos, 234 N.J. 76 (2018).

Service of process was proper in this matter. On September 24, 2018, the OAE sent a copy of the complaint to respondent at his "home office" address, by regular and certified mail, return receipt requested. The certified mail was returned marked "unable to forward, return to sender." The regular mail was not returned.

On October 29, 2018, the OAE sent a letter to respondent to the same address, by certified mail, return receipt requested, and by regular mail, warning respondent that, if he failed to file a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the entire record would be certified directly to us for the imposition of discipline, and the complaint would be deemed amended to include a violation of RPC 8.1(b). On

January 16, 2019, the certified mail was delivered, but the signature on the return receipt is illegible. The regular mail was not returned.

As of February 13, 2019, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

We now turn to the allegations of the complaint.

Elizabeth and Richard Massey retained respondent in connection with the sale of commercial and residential real estate located in River Vale, New Jersey, along with the businesses operated on the premises under the names of The Pet Lodge, LLC, and The Grooming Table, Inc., to Thomas A. Ciardella, Sr., individually and d/b/a 272 Cedar Lane, LLC, and Pet Lodge at River Vale, LLC. Michael J. Pasquale, Esq. represented Ciardella.

On August 9, 2016, the parties memorialized the terms of the transaction in a "Non-Binding Proposed Term Sheet," setting forth a proposed closing date of October 1, 2016 and requiring a $100,000 deposit. On September 16, 2016, Pasquale sent respondent Ciardella's personal check for $100,000, payable to respondent's attorney trust account (ATA), representing the deposit for the transaction. On September 19, 2016, respondent deposited the check in his ATA, bringing the balance of the account to $100,000.

Over the next seven days, through September 26, 2016, respondent engaged in seven transactions, reducing the balance of his ATA to $76,521.17. He made three on-line transfers to his attorney business account (ABA), made one large e-payment to the U.S. Department of Education, wrote two ATA checks payable to his law office, and wrote one ATA check payable to Steve Rich and Associates, Inc. None of the seven disbursements were related to the Massey/Ciardella transaction. During this same period, respondent's ABA was overdrawn, resulting in multiple overdraft fees. The three transactions to respondent's ABA were used to cover the overdrafts.

In November 2016, the parties executed a Contract for Sale and a Rider to Contract for Sale of Real Estate, agreeing to a total sales price of $1,050,000, with a deposit of $100,000 and an allocation of $450,000 of the sales price to land, $400,000 to building and fixtures, and $200,000 to business assets, including business equipment and inventory, as well as good will and other intangible assets. The Masseys, however, became frustrated, and no longer wanted to sell the property because the real estate closing was delayed several times. They never authorized respondent to use the funds for any purpose other than for their real estate transaction, and presumed that respondent maintained the escrow deposit intact in his ATA.

On April 10, 2017, Pasquale's office prepared and filed the requisite bulk sale escrow notice. By letter dated April 17, 2017, however, respondent informed Pasquale that it was the closing agent's duty to request and provide a written bulk sale escrow notice and the mortgage payoff statements, and that those documents were not available as of the final closing date. Therefore, respondent asserted that Ciardella was not ready, willing, and able to close, and that the transaction should be canceled.

Pasquale replied to respondent on the same day, asserting that his letter was "most unwelcome" and that his attempted termination of the contract was "not warranted or lawful." Pasquale further noted that his client was ready, willing, and able to close. That same day, Pasquale sent a separate letter to respondent enclosing a copy of the Division of Taxation Bulk Sales Escrow Notice requiring that $20,000 be placed in escrow to protect the interests of the purchaser and the State of New Jersey for any unpaid tax liabilities, and that an additional $2,300 be placed in escrow for taxes due and owing to the State of New Jersey. As of April 17, 2017, the balance in respondent's ATA was only $45.

On April 20, 2017, Pasquale filed a civil complaint in the Superior Court of New Jersey, Chancery Division, Bergen County, on behalf of Ciardella, seeking specific performance under the contract. On May 5, 2017, respondent filed an

answer and counterclaim on behalf of the Masseys. Respondent did not disclose that he had disbursed all but $45 of the $100,000 escrow deposit.

By letter dated May 8, 2017, Pasquale informed the Honorable Menelaos W. Toskos, J.S.C., that Ciardella was ready to perform as required and that the Masseys refused to complete the transaction. On May 18, 2017, Judge Toskos issued an order scheduling a closing of title at a time mutually agreeable to the parties, but not later than May 25, 2017, and a case management conference for June 1, 2017. On May 22, 2017, respondent asked Judge Toskos to reschedule the case management conference because of his planned vacation through June 5, 2017.

On May 24, 2017, Judge Toskos denied respondent's request; stayed his order of May 18, 2017 until May 31, 2017, to permit the Masseys an opportunity to apply for emergent relief from the Appellate Division; and, subject to any relief thereby granted, ordered that the closing of title to the real estate and business assets take place on Friday, June 2, 2017. On May 26, 2017, respondent filed a notice of appeal on behalf of the Masseys.

Between October 1, 2016 and June 1, 2017, respondent's ATA balance had decreased to $5. During this period, various disbursements were made from respondent's ATA, including forty-seven online transfers, totaling $46,187.75, to his

ABA. None of these transfers were related to the Massey/Ciardella transaction, and were accomplished without the knowledge or consent of the Masseys or Ciardella.

On June 3, 2017, Pasquale filed a motion in the Chancery Division for an order holding the Masseys in contempt for failing to comply with the court's order and appointing an attorney-in-fact to execute and deliver all required closing documents, on behalf of the Masseys, at the time of a newly scheduled closing. On June 8, 2017, the Masseys retained new counsel, David M. Watkins, Esq., to represent them in the transaction. On June 9, 2017, Watkins informed Judge Toskos, respondent, and Pasquale that he had been retained, and that his clients were in Mexico. Watkins requested that the motion be carried until June 14, 2017.

On June 9, 2017, Judge Toskos ordered that: (1) the Masseys were in violation of Ciardella's rights for failing to abide by an order of the court; (2) all remaining proceeds would be deposited into Pasquale's trust account and held in escrow pending further order of the court; (3) the closing would take place on June 9, 2017; and (4) Ciardella was entitled to counsel fees. Judge Toskos appointed William A. Monaghan, III, Esq., to serve as attorney-in-fact for the Masseys.

Also on June 9, 2017, respondent filed a Notice of Lis Pendens, seeking a judgment for damages, costs, and attorney's fees for his legal work on behalf of the

Masseys. At this point, the parties remained unaware of respondent's failure to maintain the $100,000 escrow intact.

By letter dated June 11, 2017 to respondent and Watkins, Pasquale summarized the history of the transaction, provided details of the time and location of the closing the next day, and requested that a representative attend the closing on behalf of the Masseys with fully executed closing documents. Earlier that day, respondent had notified Pasquale that respondent remained counsel of record, that Watkins had no authority to act on behalf of the Masseys, and that respondent would not withdraw the Lis Pendens until his fee was paid. In demanding that the closing take place, Pasquale informed respondent and Watkins that, if the sellers did not act as set forth in the letter, or if clear title were not delivered, he would abide by the court's order and Monaghan would act in the place of the Masseys.

On June 12, 2017, respondent informed Judge Toskos, by letter, that he still represented the Masseys, that he understood that the parties intended to close that day without payment or protection of respondent's legal fee, and that he was asserting a common law charging lien for those fees. The letter further stated that respondent had received a voicemail from Richard Massey confirming that he had not instructed that respondent's legal fee be excluded from the HUD-1 and that a copy of that voicemail had been sent to Watkins and Pasquale. Finally, the letter

asserted that respondent intended to pursue fee arbitration or another action to recover his fees.[1] As of the date of respondent's letter to Judge Toskos, the balance of respondent's ATA was still only $5.

The closing was held on June 12, 2017. The executed HUD-1 Settlement Statement listed the $100,000 escrow deposit. The Masseys continued to believe that respondent would disburse the escrow monies to them promptly upon closing. Also on June 12, 2017, the parties executed a Stipulation of Dismissal in connection with Ciardella's complaint in the Chancery Division. Still, on that same day, respondent wrote to Pasquale, stating that neither he nor his clients had agreed to exclude his legal fee from the HUD-1, and warning that, if respondent's fees were not released, he would be compelled to file suit against Pasquale. Respondent did not sue Pasquale.

By letter dated June 13, 2017, Pasquale informed respondent that the closing had taken place, suggested that respondent address the issue of his legal fee with the Masseys, and demanded the immediate discharge of the Lis Pendens affecting Ciardella's title to the property. That same day, respondent filed a Warrant to Discharge Lis Pendens.

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[1] R. 1:20A-3(a)(1) provides, however, that only clients or certain third parties may initiate fee arbitration proceedings.

One month later, on July 14, 2017, Watkins demanded that respondent immediately release the $100,000 escrow to the Masseys and provide proof that the funds had been maintained in respondent's ATA. Rather than complying, respondent replied, by letter dated August 7, 2017, that he was "asserting a charging lien . . . for outstanding amounts due on my Office's invoices, and fees and costs to be incurred from the expected fee arbitration or litigation, from the proceeds being held in my Trust Account." To resolve the matter, respondent requested the Masseys to authorize the release of the amount of his outstanding invoices from the escrow funds and to execute a release "to the benefit of me and my office for this matter."[2] Respondent enclosed a copy of his September 19, 2016 ATA deposit slip for $100,000. As of August 7, 2017, respondent's ATA had a balance of $30,000. He knew when he wrote that letter that he previously had depleted the $100,000 escrow.

On September 3, 2017, the Masseys requested fee arbitration, seeking reimbursement of attorney's fees paid to respondent. As of the December 18, 2017 fee arbitration hearing date, the balance in respondent's ATA was $230. On January 9, 2018, the fee arbitration panel issued its determination in the matter, awarding respondent $8,049.99, in addition to the $5,266.16 the Masseys had paid. Therefore,

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[2] Respondent had billed the Masseys $36,351.73 for his work on their matter and had been paid $5,266.16.

despite his failure to promptly release the $100,000 escrow after the June 2017 real estate closing, the Masseys made two payments to respondent, totaling $8,049.99, in December 2017 and January 2018 respectively. However, because the fee arbitration panel was concerned that respondent might not have continued to hold the $100,000 escrow in his ATA months after the closing, the panel referred the matter to the OAE.

On May 29, 2018, the OAE filed a motion for respondent's immediate temporary suspension from the practice of law, which respondent opposed on June 13, 2018. Although respondent provided the Court with a copy of the $100,000 check payable to his trust account, and a copy of his trust account deposit slip, dated September 19, 2016, the Court temporarily suspended him from the practice of law, on July 3, 2018.

On July 5, 2018, the OAE sent to PNC Bank a copy of an Order requiring the bank to refrain from disbursing any funds from respondent's accounts, pending further order of the Court. PNC immediately replied that respondent's ATA had a balance of $30, that respondent's ABA had a balance of $332.13, and that separate checks payable to the Clerk of the Superior Court would be sent to the OAE's attention.

On August 11, 2017, the Masseys filed the ethics grievance underlying this matter. The OAE sent the grievance to respondent, on November 1, 2017, and requested his written reply, along with his client file and attorney trust records, by November 17, 2017. On November 16, 2017, respondent provided a copy of his client file and a completed attorney bank account disclosure form. He informed the OAE that he would provide his trust account records in a separate package, due to the size of the matter. Respondent failed to produce any trust account records.

On March 5, 2018, the OAE sent a second request to respondent, by regular and certified mail, seeking the trust account records and proof, by March 16, 2018, that respondent had both disbursed the $100,000 escrow deposit to the Masseys and held the funds inviolate in his ATA from September 19, 2016, to the date he made the presumed final disbursement to the Masseys. The regular mail was not returned. The certified mail was delivered on March 8, 2018; however, the signature on the return receipt is illegible.

By letter dated April 5, 2018, the OAE cautioned respondent that, if he did not provide the requested documentation by April 13, 2018, the OAE would file a motion for his temporary suspension. The letter informed respondent that a demand audit was scheduled for May 17, 2018, at the OAE's office. The regular mail was not returned; again, the certified mail was delivered on April 9, 2018, but the signature on the return receipt was illegible. Respondent did not reply.

On May 16, 2018, OAE personnel left a message with respondent's secretary, requesting that he call the OAE to confirm his appearance at the demand audit scheduled for the next day. Respondent neither returned the OAE's telephone call nor appeared at the scheduled demand audit.

Following a review of the record, we find that the facts recited in the complaint support some 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). Nevertheless, each charge in an ethics complaint must be supported by sufficient evidence for a determination of unethical conduct.

Respondent used for his own benefit $100,000 that he was required to hold in escrow in connection with a real estate transaction. After the closing, respondent was obligated to disburse those funds to his clients, the Masseys. That never happened. Instead, respondent depleted the funds almost immediately upon their deposit into his ATA, using them for his own benefit. Exacerbating respondent's malfeasance, after he depleted the funds, he acted to disrupt the transaction and prevent its completion. Therefore, based on his theft of the $100,000 deposit, respondent knowingly misappropriated funds entrusted to his care in violation of the principles of In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985), and in violation of RPC 1.15(a).

In respect of the allegation that respondent failed to promptly disburse the $100,000 to the Masseys, in violation of RPC 1.15(b), that charge is subsumed in the more serious charge of knowing misappropriation.

Further, respondent violated RPC 8.1(b) by failing to reply to the OAE's letters and telephone calls seeking documents and scheduling a demand audit. Thereafter, he failed to appear for the demand audit.

Respondent also violated RPC 8.4(c), by his misrepresentations, mostly by silence, to the Masseys, Judge Toskos, and the OAE, concerning the existence and maintenance of the $100,000 of escrow funds in his ATA. By failing to disclose to Judge Toskos the fact that respondent no longer maintained the escrow funds inviolate, he misled a tribunal, in violation of RPC 3.3(a)(5).

Finally, the complaint charged respondent with violating RPC 8.4(b) by committing second-degree theft by deception, contrary to N.J.S.A. 2C:20-4, N.J.S.A. 2C:20-2(b)(1)(a), and/or N.J.S.A. 2C:20-2(b)(1)(f), and second-degree misapplication of entrusted property, contrary to N.J.S.A. 2C:21-15. As a matter of precedent, RPC 8.4(b) usually is not found merely in conjunction with a finding of knowing misappropriation. Therefore, we dismiss the charged RPC 8.4(b) violation.

In sum, respondent violated RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451, and In re Hollendonner, 102 N.J. 21, RPC 3.3(a)(5), RPC 8.1(b), and RPC 8.4(c).

Respondent's ultimate misconduct was the knowing misappropriation of escrow funds held in his trust account. He used these funds to pay for student loans and to pay overdraft fees in his business account. He also transferred large amounts of money to his business account, after which those funds disappeared. After stealing $100,000 from his clients, respondent had the audacity to file a Lis Pendens seeking a judgment against them for damages and legal fees. It appears respondent did everything he could to delay the closing of the transaction in order to conceal his theft. His flagrancy trumps his dishonesty.

In In re Wilson, 81 N.J. 451, 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).]

Thus, to establish knowing misappropriation, there must be clear and convincing evidence that the attorney used trust funds, knowing that they belonged to the client and knowing that the client had not authorized him or her to do so. This principle also applies to other funds that the attorney is required to hold inviolate, such as escrow funds. In re Hollendonner, 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, holding that "[s]o akin is

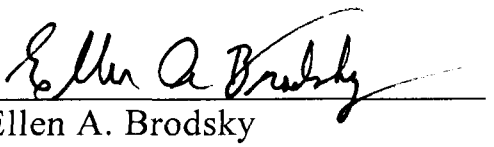
the one to the other that henceforth an attorney found to have knowingly misused escrow funds will confront the [Wilson] disbarment rule . . . " In re Hollendonner, 102 N.J. at 28-29.

Accordingly, because respondent knowingly misappropriated $100,000 of escrow funds, disbarment is the only appropriate sanction, pursuant to the principles of Wilson and Hollendonner. We so recommend and, therefore, need not address the appropriate quantum of discipline for his additional ethics violations.

Members Petrou, Rivera, and Singer 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
Bruce W. Clark, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Alfredo Ramos, Jr.
Docket No. DRB 19-069

Decided: September 17, 2019

Disposition: Disbar

Members	Disbar	Recused	Did Not Participate
Clark	X		
Gallipoli	X		
Boyer	X		
Hoberman	X		
Joseph	X		
Petrou			X
Rivera			X
Singer			X
Zmirich	X		
Total:	6	0	3

Ellen A. Brodsky
Chief Counsel