SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-310
District Docket No. XIV-2010-0090E

IN THE MATTER OF

FENG LI

AN ATTORNEY AT LAW

Decision

Argued: March 21, 2013

Decided: April 3, 2013

HoeChin Kim appeared on behalf of the Office of Attorney Ethics.

Herbert Waldman appeared on behalf of respondent.

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

This matter came before us on a recommendation for disbarment filed by Special Master Bernard A. Kuttner. The four-count complaint filed by the Office of Attorney Ethics (OAE) charged respondent with knowing misappropriation of client funds, violations of RPC 1.15(a) (failure to safeguard funds) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), failing to segregate disputed funds, a

violation of RPC 1.15(c), and failing to provide an accounting of disbursed funds, a violation of RPC 1.5(c) (count one); a second instance of knowing misappropriation of client funds (count two); making misrepresentations on his own bankruptcy petition, a violation of RPC 3.4(a) (unlawful obstruction of another party's access to evidence), RPC 8.4(c), and RPC 8.4(d) (conduct prejudicial to the administration of justice) and failing to comply with a court order, a violation of RPC 3.4(c) (count three); and failing to comply with recordkeeping rules, a violation of RPC 1.15(d) and R. 1:21-6 (count four).

For the reasons expressed below, we agree with the special master's finding that respondent knowingly misappropriated trust funds and, therefore, must be disbarred. Three members filed a separate dissent, one voting for a three-month suspension and two for a one-year suspension.

Respondent was admitted to the New Jersey and New York bars in 2004 and the Pennsylvania bar in 2005. He has no disciplinary history in New Jersey.

Upon graduation from law school, respondent received no job offers from law firms. He became employed by Net Access, performing legal research. He has never worked for a law firm or had his work reviewed by another attorney.

Alfred and Diana Peng retained respondent on January 3, 2005 to file a lawsuit in connection with Alfred's retirement investments.[1] Their financial advisor, Pai Su Kang, had referred them to respondent. Until respondent represented the Pengs, the only legal services that he had performed involved drafting wills and handling real estate transactions. Having never previously prepared a written fee agreement, respondent obtained from the internet a retainer agreement form that he used for his representation of the Pengs. It provided for a contingent fee and tracked the percentages appearing in R. 1:21-7, except that, whereas the rule permits attorneys to charge thirty percent of the second $500,000 recovered, the agreement provided for a fee of thirty percent of the next $50,000.[2]

In September 2005, Alfred asked respondent to take over litigation that had been pending in New York on behalf of a group of doctors including himself, Tzu Li Hsu,[3] Joseph Huang, Stephen Huang, Pen Fa Lee, as well as Veronica Wan, the administratrix of the Estate of Chee C. Wan. In 1983, the doctors invested in a commercial building in New York through

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[1] We will use the Pengs' first names in this opinion, sacrificing formality for clarity.

[2] According to respondent, the $50,000 amount was a typographical error and should have been $500,000.

[3] The record also refers to Tzu Li Hsu as Tzuli Hsu and Tsuli Hsu.

Dr. Fabian Sy. They formed a partnership known as SHLP associates. In 1984, the partners, along with others, formed a second partnership, Empire Group Associates, which invested in another property.

In 1990, the partners initially retained Andrew Nichols, who sued Sy in Queens County Supreme Court for an accounting and damages, claiming fraud, breach of fiduciary duty, and unjust enrichment. Nichols billed them on an hourly basis. When Nichols relocated to Florida, in 1993, Clinton Calhoun, a member of a different law firm, was substituted as counsel. Although Calhoun represented the partners on a one-third contingent fee basis, he billed them hourly for his services. The partners contributed to a fund from which Calhoun's fee was paid.

By the time the partners retained respondent, in 2005, the case had languished for fifteen years. Many of the partners had dropped out of the lawsuit, viewing it as a lost cause.

In September 2005, when Alfred contacted respondent about the Sy litigation, he indicated that the matter involved a real estate dispute pending in a New York court. Respondent, not aware of the size or complexity of the litigation, assumed that it involved a minor real estate dispute and agreed to the representation. Over the next few days, Alfred told respondent that there were other plaintiffs, that an October 7, 2005 trial

date had been set, and that, although Calhoun was then representing the partners, they wanted to retain respondent. After respondent was retained, he contacted Calhoun to obtain the file. Calhoun indicated that respondent would need a truck. Respondent retrieved about ten boxes from Calhoun.

Although respondent wanted to be paid on an hourly basis, he agreed to a contingent fee. According to respondent, Alfred contacted him at home on the evening of September 27, 2005, indicating that, because the trial date of October 7, 2005 was approaching, a retainer agreement had to be prepared immediately. Respondent returned to his office, modified the fee agreement that he had used during his prior representation of the Pengs, and faxed a retainer agreement to the partners.

Stephen Huang and Jin Lee (the wife of Dr. Pen Fa Lee), testified that Alfred and respondent had discussed the case for weeks or several months before entering into the fee agreement. In addition, Diana asserted that respondent and Alfred had discussed the case by telephone in April or May 2005.[4]

Respondent prepared only one fee agreement naming all of the partners. It contained his New Jersey office address, his New Jersey office telephone number, and a reference to a New

[4] Alfred Peng died on December 14, 2008.

Jersey Court Rule. The agreement, which referred to the partners collectively as "you," provided that the

> fee will be based on a percentage of the net recovery. Net recovery is the total recovered on Your behalf, minus Your costs and expenses . . . and minus any interest in a judgment pursuant to R. 4:42-11(B).[5] The fee will be as follows:
>
> 33-1/3% on the first $500,000 recovered;
> 30% on the next $50,000 net recovered;[6]
> 25% on the next $500,000 net recovered; and
> 20% on the next $500,000 recovered.
>
> Fees on net recoveries exceeding $2,000,000.00 will be determined by the court by application for reasonable fee pursuant to R. 1:21-7(f).
>
> [Exs.P-4,P-5,P-6,P-7.]

Respondent neither explained the terms of the retainer agreement to his clients nor discussed with them whether New York or New Jersey law would apply to the agreement. The partners always met as a group at respondent's New Jersey office; they never met with him at his New York law office. Stephen Huang was not aware that respondent had a New York office. They were billed for litigation expenses as a group.

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[5] That rule provides that, in tort actions, the court shall include prejudgment interest in the amount of the judgment and that the contingent fee of an attorney shall not be computed on the prejudgment interest.

[6] As noted previously, respondent asserted that this amount was a typographical error.

The non-jury trial took place before Judge Allen B. Weiss in New York from September 17, 2007 through October 22, 2007. In a February 28, 2008 memorandum, Judge Weiss determined that

> Dr. Sy fraudulently and in breach of his fiduciary duty to his partners used the partnerships and its assets as his personal property for his own benefit without the knowledge or consent of his partners, that he engaged in self-dealing by placing his personal interests above and in conflict with those of the partnerships thereby violating his fiduciary obligations to his partners and causing the failure of the ventures and loss of the plaintiffs' investments.
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> [Ex.P-18,p.19.]

On March 24, 2008, the trial court entered final judgment as follows:

> (i) $213,913.89 ($82,871 in principal; $131,042.89 in interest) in favor of Dr. Stephen Huang;
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> (ii) $800,199.18 ($310,000 in principal; $490,199.18 in interest) in favor of Dr. Joseph Huang;
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> (iii) $446,562.77 ($173,000 in principal; $273,562.77 in interest) in favor of Veronica Wan, as Administratrix of the Estate of Chee C. Wan;
>
> (iv) $830,658.37 ($321,800 in principal; $508,858.37 in interest) in favor of Dr. Pen Fa Lee;
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> (v) $700,303.35 ($271,300 in principal; $429,003.35 in interest) in favor of Dr. Alfred Peng;

(vi) $447,853.41 ($173,500 in principal; $274,353.41 in interest) in favor of Dr. Tzuli Hsu.

[Ex.P-19.]

The pre-judgment interest was calculated in accordance with New York law, specifically CPLR Sec. 5004. The total awarded to the partners was approximately $3.5 million. Judge Weiss determined that the measure of damages was the partners' capital contributions, plus statutory interest. Some of the partners were not satisfied with Judge Weiss' decision because their expert had issued a report indicating that, if they had received the benefit of their investment, they would have been entitled to $12 million.

On March 28, 2008, several days after the entry of the judgment, respondent filed a petition with the court for the turnover of other funds "in partial satisfaction of the unpaid judgment." Specifically, after the partners sued Sy, in 1990, he stopped paying the mortgages on the commercial properties in which the parties had invested. Although two of the properties were lost to foreclosure, one property was sold in 1992 and the proceeds had been held in trust by Sy's attorney, Joel Rabine, since that time.

On April 16, 2008, Judge Weiss granted respondent's turnover motion. In an April 4, 2008 letter to the partners,

Stephen Huang had indicated that respondent should receive a small fee for obtaining the release of the Rabine funds, pointing out that the "money had always been there and is not recovered by anyone's effort."

On May 5, 2008, respondent opened a trust account at Sovereign Bank, depositing the Rabine funds in the amount of $516,854.40 in that account. Respondent's wife, Chee P. Li, a certified public accountant, but not an attorney, was a signatory on the account. Three days later, on May 8, 2008, respondent withdrew the Rabine funds, depositing them in an interest-bearing trust account, also at Sovereign Bank.

Sy filed an appeal of Judge Weiss' decision. CPLR Sec. 5519(a)2 requires the posting of an undertaking to stay a decision pending appeal. On May 5, 2008, Sy's counsel filed an affirmation with the New York court, arguing that, because respondent had previously received the Rabine funds of $516,854.40 in partial satisfaction of the judgment, the undertaking should be set at $2,924,464.57. In a May 27, 2008 reply, respondent contended that the appropriate amount of the undertaking was $4,060,756.39, based on the $3,441,318.97 judgment plus projected interest of $619,437.42.

On August 4, 2008, in accordance with a July 22, 2008 "So-Ordered Stipulation," Sy posted $3,544,000 with the court.

Respondent testified that, in arriving at this decision, the court agreed with his adversary and gave Sy credit for the Rabine funds as partial payment of the judgment. Respondent, thus, asserted that the Rabine funds, as part of the Sy judgment, should be included in the amount recovered by the partners for purposes of calculating his fee.

Respondent did not discuss with the partners any fee arrangements for representing them on appeal or for collecting the judgment. According to Jin Lee, respondent asserted that he would collect the judgment without charging additional legal fees. In turn, respondent, while admitting that he had not entered into a fee agreement with the partners for the appeal and judgment collection, denied that he had volunteered to collect the judgment without compensation. Respondent never sent the partners invoices for either the appeal or collection services.

After respondent successfully defended the judgment on appeal, the Commissioner of Finance sent a check to respondent, dated August 14, 2009, in the amount of $3,548,506.91, representing the amount of the judgment, plus interest. On August 17, 2009, respondent deposited that check in a trust account that he maintained at JP Morgan Chase Bank.

In a July 29, 2009 letter to respondent, Stephen Huang suggested that the Rabine funds should not be included in the clients' recovery for purposes of calculating respondent's legal fees, noting that those funds had been obtained before respondent began representing the partners. Huang proposed that respondent receive a "reasonable" fee for obtaining the release of those funds. When Huang contacted respondent shortly thereafter to determine whether he had received the letter, respondent replied that, after he had read the letter, he had thrown it in the garbage.

On August 1, 2009, in anticipation of receipt of the judgment funds, respondent and the partners, with the exception of Stephen Huang, met at respondent's New Jersey office. Respondent had asked the partners to bring documentation of the expenses that they had contributed to the case. At the meeting, respondent calculated, on a blackboard, the amount that each partner had advanced toward the total expenses of $176,673.86.

During the meeting, respondent indicated that he intended to calculate his fee on the partners' individual recoveries, rather than on the lump sum that they had received as a group. Respondent acknowledged, at the ethics hearing, that the partners disagreed with him on this score, asserting that they should be treated as a group.

Although Pen Fa Lee, his wife, Jin Lee, and Veronica Wan testified that respondent indicated, at the meeting, that he intended to recover fees on the pre-judgment interest, respondent and Tzu Li Hsu denied that the subject of pre-judgment interest had arisen at the meeting.

In reply to the partners' objections about respondent's fee calculation, he explained that he had made a mistake in using a New Jersey contingent fee agreement, asserting that he should have used a New York form. He further claimed that he should not have used a "sliding scale" because it did not apply to their type of case.[7] According to respondent, he had not reviewed the retainer agreement after it had been executed. He told his clients, at the August 1, 2009 meeting, that he was shocked to learn that he had used the wrong form. He asserted that his clients knew that, because he had recovered approximately $4 million dollars on their behalf, he was entitled to a one-third fee of about $1.2 or $1.3 million dollars.

When the partners indicated that they expected respondent to comply with the retainer agreement, as written, and not as respondent interpreted it, he replied that they could sue him.

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[7] Several of the partners believed that respondent's fee was one-third of the recovery. Stephen Huang told the OAE investigator that respondent's fee was one-third. According to Jin Lee, Alfred had told her, when the partners retained respondent, that the fee was one-third.

During the meeting, respondent told the partners that he was going on vacation to China for one month.

After the meeting, Jin Lee contacted her son-in-law, an attorney, who suggested that the partners send a letter to respondent directing him to refrain from disbursing any of the funds until the fee dispute was settled. On August 6, 2009, the partners sent to respondent a letter bearing the caption "Dispute regarding legal fees owed," in which they asserted:

> The Fee Agreement dictates that:
>
> 1. The legal fee shall be calculated using the net recovery received by the Clients on a collective basis, as opposed to the net recovery received by each individual Client; and
>
> 2. The net recovery shall not include any "interest included in the judgment," meaning that your legal fee shall not be based on any portion of the judgment attributable to accrued interest.
>
> Until we reach an agreement with you on the legal fees, we request that you not withdraw, commingle other monies with, or otherwise access the judgment awarded to the Clients under the Case.
>
> [Ex.P-36.]

The letter was sent by fax and by certified mail to respondent's New Jersey office. The partners received (1) confirmation that the fax had been received by respondent's fax

machine and (2) the certified mail receipt signed by an unknown individual.[8]

In addition, on August 7, 2009, Joseph Huang sent a similar letter to respondent, demanding that he maintain intact the funds in dispute and that he provide, within five days, the amount that respondent believed he should receive as legal fees and the amount that should be distributed to the partners.

Also, Stephen Huang retained an attorney, Kenneth Moran, who sent an August 18, 2009 letter to respondent, asserting that respondent's fee should (1) not be calculated on the part of the recovery attributable to prejudgment interest; (2) be based on the aggregate award; (3) be computed in accordance with the percentages listed in the retainer agreement; and (4) not include the Rabine funds as part of the recovery, because the property had been sold twelve years before respondent's representation began and the funds were not part of the litigation. Moran did not receive a reply from respondent.

Between August 18 and September 2, 2009, respondent and his wife were in China. According to respondent, between the August 1, 2009 meeting and his August 18, 2009 departure, he did not go to his New Jersey office, check his mail, or retrieve his phone messages. He claimed, thus, that he did not receive the

[8] Although the signature on the certified mail receipt is difficult to read, it is clearly not respondent's name.

partners' August 6, 2009 letter or Joseph Huang's August 7, 2009 letter until September 2009. He acknowledged, however, that before he left for China, he knew that his clients disputed his fee, but believed that the only disagreement concerned whether they should be treated as a group or as individuals. He explained that, at that time, he was not aware that RPC 1.15(c) required that he retain the disputed portion of his fee in his trust account until the dispute was resolved.

Respondent arrived at the amount of his legal fee in the following manner. He combined the Rabine funds and the judgment funds, deducted the expenses of the litigation, determined the clients' respective percentage shares of the amount recovered, and calculated his fee by applying the "sliding scale" appearing in the retainer agreement to each client's share. He admitted that, in his calculation of his legal fee, he had included pre-judgment interest that had been awarded to the clients.

Respondent stipulated that he disbursed the amount that he had calculated as his legal fee as follows:

> (i) check number 400, dated August 18, 2009, drawn on his Sovereign trust account in the amount of $242,575 payable to Respondent's son, Vincent Li;
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> (ii) check number 401, dated August 18, 2009, drawn on his Sovereign trust account in the amount of $282,459.85 payable to Respondent's daughter, Christine Li.

> (iii) check number 1006 dated August 27, 2009, drawn on his Chase trust account, in the amount of $382,903 payable to Respondent's [son] Vincent Li, and deposited into Chase account number XXXXXX9580;
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> (iv) check number 1005 dated August 27, 2009 drawn on his Chase trust account, in the amount of $352,005 payable to Respondent's [daughter] Christine Li, and deposited into Chase account number XXXXXX9572.
>
> [S¶14.][9]

Respondent issued Sovereign account checks 400 and 401 from the Rabine funds, which he had received on May 5, 2008. Those checks were then deposited into a bank account maintained in respondent's wife's name at Citibank. Chase trust account checks 1005 and 1006 were drawn on the funds from the judgment and were deposited into Chase bank accounts maintained in respondent's wife's name under the New Jersey Uniform Transfers to Minors Act for the benefit of the parties' two children. At that time, respondent's children were nine and fifteen years old. According to respondent, because only his wife had been named as guardian of the children's bank accounts, he had no authority to remove funds from those accounts.

At the ethics hearing, the following exchange took place between the special master and respondent:

[9] S refers to the stipulation of facts signed by the OAE and respondent's counsel.

> MR. KUTTNER: And why did you transfer the -- why did you put money from the trust account into your children's name . . . ?
>
> THE WITNESS: The couple things why two children. First, I never have a personal account, I don't have personal account.
>
> MR. KUTTNER: Did you have an attorney professional account?
>
> THE WITNESS: You mean, business account?
>
> MR. KUTTNER: Yes.
>
> THE WITNESS: Yes, I did, I do.
>
> MR. KUTTNER: And this money that went from the trust account didn't first go to the attorney business account?
>
> THE WITNESS: No, it did not.
>
> [4T130-10 to 25.][10]

Respondent admitted that he took his legal fees without his clients' knowledge or consent and that they had not authorized the amount of the fee that he had taken.

In contrast to the August 27, 2009 checks to respondent's children issued from the Chase trust account, the checks to the clients, issued from that same account, were dated September 8, 2009. Along with each check, respondent sent to the client a summary of his fee calculation. Two of the checks issued to the

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[10] 4T refers to the transcript of the May 17, 2012 ethics hearing.

clients were negotiated on September 22, 2009; the remaining four were negotiated between October 6 and October 13, 2009.

Respondent's explanation for the disbursements to himself and to the clients was as follows. He had received the $3,548,506.91 August 14, 2009 check from the Commissioner of Finance on August 17, 2009, the day before he left for China. Planning to disburse all of the funds (both the Rabine funds and the judgment monies) to both his clients and himself before leaving on his trip, he brought the judgment check and his checkbook to a Chase branch. The branch manager, David Monsilino, however, informed him that it was against bank policy to permit such a large check to be deposited and drawn against on the same day.

According to respondent, Monsilino then suggested that he place the date of August 26, 2009 on the checks for his fee. Monsilino would monitor the account while he was in China and deposit the checks issued to his children once the judgment funds had cleared. Monsilino cautioned him against sending the checks to his clients, in case there was a problem with the check from the Commissioner of Finance. Indeed, although respondent wrote out the client's checks on August 17, 2009, he dated them September 8, 2009.

Respondent returned to his New Jersey office on September 8, 2009, the day after Labor Day. He testified that he first saw the August 6, 2009 letters and faxes from his clients on September 8, 2009. At that point, respondent realized that the fee dispute was serious. At the ethics hearing, respondent recalled feeling sadness and anger that his clients, who had previously treated him like family, had turned against him. He added that he also realized that the interest was a large part of the case and that he had "made a huge mistake."[11]

Respondent immediately drafted a ten-page letter that he sent to each of the clients individually. That letter stated, in part:

> After the Judgment in this case was entered, I heard some rumors that some Plaintiffs misrepresented their losses during their sworn testimony at the trial. IF this is true, it may create problems [for] all of us. I may have certain ethical obligations as an Officer of the Court, which could affect the Judgment adversely for all the Plaintiffs. These obligations may come into play IF there are any continuing proceedings in this case and could conceivably injure or impair the Judgment. I do not think it is in the interest of the Plaintiffs to re-open this case and Judgment.
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> [Ex.P-57,p.7].

[11] In his brief filed with the special master, respondent asserted that, in New York, fee calculations expressly include interest on a judgment as part of the amount recovered.

In addition, in that letter, respondent stated that, if the clients litigated the fee dispute, he would charge them $273,375 for his legal fees for defending the decision on appeal and for collecting the judgment. Respondent claimed that he had spent 425 hours on the appeal and 305 hours on collection efforts, at $375 per hour.

On August 31, 2009, the partners retained Willard Shih, an attorney with Wilentz, Goldman & Spitzer, to file a lawsuit against respondent to resolve the fee dispute. Shih filed a complaint against respondent in the Superior Court of New Jersey, Middlesex County, on September 11, 2009. In the complaint, Shih asserted that respondent was entitled to a fee of $326,642.47, calculated by applying the "sliding scale" to the clients' aggregate net recovery, exclusive of interest. He further contended that respondent was not entitled to any portion of the Rabine funds because (1) they had been held in trust long before respondent began representing the clients and (2) the judgment did not refer to those funds.

After filing the complaint, Shih faxed it to respondent on September 15, 2009. He then called respondent, who acknowledged receiving the complaint. Shih sought respondent's consent to an order to show cause to avoid litigation. Respondent did not consent.

Shih then filed, on September 15, 2009, an application for an order to show cause with temporary restraints. On September 17, 2009, respondent submitted a reply opposing that application, asserting that the fee dispute involved a New York case, that the clients had no basis for seeking relief in New Jersey, and that he had filed suit against the clients in Westchester County, New York. Also on September 17, 2009, respondent filed a complaint in Westchester County, New York, seeking a declaration that New York law governed the parties' retainer agreement and that his fee should be calculated as one-third of the recovery, including interest. Respondent also sought damages for breach of contract, based on his entitlement for fees for appellate and collection services; for defamation; and for breach of the duty of good faith and fair dealing. In his New York complaint, respondent did not reveal the existence of the lawsuit that his former clients had filed against him in New Jersey.

On September 23, 2009, Middlesex County Judge Travis L. Francis issued an order to show cause, returnable on September 25, 2009, temporarily restraining respondent from dissipating funds received on his clients' behalf. Shih faxed a copy of the order to respondent's home on September 23, 2009 at about 6:00 P.M.. Respondent asserted that, because his fax machine is

located in his basement, he first saw the fax the next morning, September 24, 2009. On that same day, respondent requested an adjournment of the return date. Shih consented to the adjournment. Afterwards, he learned that respondent had filed the complaint in New York.

On September 23, 2009, respondent's wife, at respondent's direction, arranged to wire all of his fees, totaling $1,293,783.73, to parties in China. Specifically, on September 23, 2009, the Rabine funds in the amount of $525,745.81, were wired out of the country in two transactions: one in the amount of $242,915.67, which was arranged at 10:59 A.M. and sent at 3:00 P.M. to Lui Xi Yu; the second in the amount of $282,830.14, which was arranged at 11:13 A.M and sent at 4:19 P.M. to Lui Qi Yu.

Also on September 23, 2009, $768,037.92 from the judgment funds were wired as follows: $367,711.57 from the account of respondent's daughter were sent to the Bank of China and $400,326.35 from the account of respondent's son were sent to Hongkong & Shanghai Banking.

Respondent claimed that the funds were wired to China to pay a pre-existing debt for an internet venture in Shanghai. Letters dated September 29, 2009 from National Business Credit U.S.A. and Imperial Credit America to respondent confirmed

receipt of final payment of his overdue balances in the amounts of $985,656.98 and $308,126.75, respectively. In addition, Lui Xi Yu and Lui Qi Yu asserted in a joint affidavit that, in 2003, they lent $725,000 to respondent through National Business Credit, U.S.A., a broker; that, in 2004, they lent $275,000 to respondent through Imperial Credit America, a broker; that the loans were for a start up company, Shanghai Internet Services, in China; that the loans went into default; that, although respondent owed about $1.1 million for the 2003 loan, they accepted $985,656.98 as payment in full; and that they settled the 2004 loan in a similar fashion. They further acknowledged that they received, via four wire transactions, $1,293.783.73 as full payment.

Although the funds had been deposited in respondent's children's bank accounts on August 17 and August 26, 2009, he did not arrange to wire the funds overseas until September 23, 2009, the date of the temporary restraining order. Respondent acknowledged that, at least as early as September 17, 2009, when he filed a reply to Shih's application for a temporary injunction, he was aware that his clients were attempting to restrain the funds that he was holding until the fee dispute could be resolved. He also conceded that, despite this

knowledge, he arranged for the funds to be wired to China on September 23, 2009.

After respondent received the September 23, 2009 restraining order, he neither contacted the bank to stop the funds from being wired nor asked his wife, the guardian of the bank accounts, to do so.

On October 2, 2009, respondent appeared telephonically before Judge Francis for the hearing on the order to show cause. At that time, respondent disclosed to Judge Francis that he had disbursed all of the funds that the clients were seeking to preserve. Upon learning that respondent had depleted all of the Sy and Rabine funds, Shih tried, several times, to elicit information from respondent concerning their whereabouts. In reply, respondent asserted that, if his clients believed that they had an interest in any of those monies, they should have sought injunctive relief in New York in July or early August.

Judge Francis then asked respondent why he took his fee if he knew it was in dispute. Respondent replied that he believed it was his professional obligation to distribute the fee once he received the funds from the court.

At the end of the hearing, Judge Francis directed respondent to preserve any funds remaining in his trust account, to return to his trust account any funds that he removed as

fees, and to provide Shih with an accounting within ten days. Upon receiving these instructions, respondent assured Judge Francis, "Yes, I will do that. . . . Whatever Your Honor said, I'm going to follow your order, Your Honor. . . . I will do it properly to protect myself."

On October 15, 2009, Judge Francis entered an order memorializing his oral ruling of October 2, 2009. Respondent did not comply with this order. He neither replaced the funds in his trust account nor provided his clients with an accounting.

Meanwhile, respondent sought, in New York, to restrain the clients from litigating the fee dispute in New Jersey. On October 5, 2009, three days after the hearing before Judge Francis, Westchester County Judge Robert DiBella issued an order scheduling an October 16, 2009 hearing on respondent's request for an order to show cause and restraining the clients from litigating the fee dispute in New Jersey.

On October 16, 2009, the day after Judge Francis entered his order, Judge DiBella heard oral argument in New York. At that hearing, in contrast to respondent's statement before Judge Francis that his clients should have sought an injunction in July or August, respondent complained that they "rushed to the Jersey court." At the end of the hearing, Judge DiBella orally converted the temporary restraining order of October 5, 2009 to

a preliminary injunction, enjoining the parties from continuing with the New Jersey proceedings until he determined the issues.[12]

On December 30, 2009, Judge DiBella denied respondent's motion for an injunction. The judge determined that, under principles of comity, he could not stay proceedings pending in a court of competent jurisdiction absent a showing of bad faith, fraud, intent to harass, or intent to evade the law of the domicile of the parties. Judge DiBella found no such showing.

On January 25, 2010, the Appellate Division in New York denied respondent's application for a restraining order. The next day, January 26, 2010, respondent filed a bankruptcy petition, naming his clients as creditors.

The formal ethics complaint charged respondent with violating RPC 8.4(c) by making a misrepresentation in the bankruptcy petition. In that document, respondent indicated that his income in 2009, the year that he received about $1.2 million in fees, was $15,000. At the ethics hearing, respondent claimed that he had made a mistake because he had prepared the petition in haste. He asserted that, at the first creditors' meeting, the Sy judgment check had been produced and discussed, thus curing any omission on his part.

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[12] This order apparently was not reduced to writing.

At the ethics hearing, the OAE presented additional instances of alleged misrepresentations not charged in the complaint. Specifically, in an April 26, 2010 reply to a New York ethics grievance filed against him, respondent asserted that the total amount that he received in connection with the Sy litigation was $3,548,506, that he paid his former clients $2,808,808.40, and that the "total amount" that he received was $734,908. Respondent testified that his failure to reference the legal fees that he received from the Rabine funds was a mistake.

In his July 29, 2010 affidavit to the New York ethics authorities, respondent represented that he had received less than the amount authorized by the retainer agreement. At the hearing before the special master, respondent conceded that he had been referring to the retainer agreement, not as it was actually prepared, but as it should have been prepared.

The record also reflects that, in a June 2, 2010 deposition that Shih took in respondent's bankruptcy case, respondent was evasive about the disposition of the funds that he had taken as his legal fees:

> Q. What did you do with the money [$3,548,506.91]?
>
> A. I distributed it to my former clients, 2.8 million dollars to other client.
>
> Q. What did you do with the other 700,000?

A. With $700,000, it's my proceeds based on the agreement. I worked hard for this client. I paid my debts after I got this $700,000.

[Ex.P-86,p.79-21 to p.80-3.]

Q. What did you do with the money? Did you take it out of the account by cash, by check, or did you leave it in the account?

A. I took I believe by check to pay to my creditor.

Q. You wrote checks payable to your creditor from this account?

A. Yes. Eventually, yes.

Q. No, I didn't say eventually. Did you have checks made payable to the creditor drawn directly from your trust account?

A. No.

Q. So my question stands. What did you do with the 700,000? . . . Did you withdraw the money or is the money still there?

A. I withdraw [sic] the money.

Q. By check or checks?

A. Yes by checks. After I –

Q. Who were the checks payable to?

A. After the calculations, I distributed –

Q. Who were the checks payable to?

A. After I got the proceeds, I did some calculations –

Q. Can you answer the question, sir? Is it one or more –

A. Please, Mr. Shih, I try to answer your question. You keep interrupting me.

[Ex.P-86,p.81-12 to p.82-16.]

Q. Say whatever you need to say. I'll repeat my question after that.

A. [T]his $700,000 based on agreement, it's my proceed, belong to my attorney fees. I wrote $700,000 to my personal account. Then I paid it to creditors which I owe money to.

Q. So how many checks did you write out of the account for the 700,000?

A. Two checks.

Q. Two checks. Payable to who?

A. I think indirectly to –

Q. No. Payable to who? Who was – it says "pay to the order of" blank. What name did you fill in?

A. I remember it's to my family account, either my wife, some account. Then I paid to creditors.

[Ex.P-86,p.83-11 to 84-5].

Q. Who wrote the checks to have your creditors paid?

A. I did.

Q. You did.

A. Yeah.

Q. Did you sign the checks?

A. No, I did not sign the checks.

Q. Your wife signed the checks?

A. Yes, she signed, I sent out to pay the creditors.

[Ex.P-86,p.91-4 to p.91-13.]

Respondent then testified at the deposition that he had used his legal fees of $1.2 million from the judgment and the Rabine funds to pay a business loan of almost $800,000 to National Business Loan Creditor, to pay a debt of more than $100,000 owed to Imperial Creditors, and to pay more than $100,000 for his law school tuition. Respondent indicated that he had issued three checks to pay these creditors. He did not mention that he had wired the funds to China.

On January 18, 2011, the clients filed an adversary complaint in respondent's bankruptcy matter seeking a judgment denying the discharge of the debt that they claimed was owed to them. At oral argument before us, respondent's counsel stated that that adversary proceeding remains pending.

The special master found that respondent mistakenly prepared a New Jersey retainer agreement for use in a New York case; that, notwithstanding the graduated fee scale contained in the agreement, all of his clients believed that his fee was one-third of any recovery; and that the clients decided to benefit from respondent's mistake by taking advantage of the graduated fee scale and the provision excluding interest from the recovery

for purposes of the fee calculation. The special master noted that, although respondent acceded to his clients' request by using the graduated scale in computing his fee, he insisted on charging each client individually, rather than as a group. The special master also found that a dispute existed over whether the Rabine funds should be included in the fee calculation.

The special master determined that respondent knowingly misappropriated client funds when, on August 17, 2009, he issued two checks ($282,459.85 to his daughter and $242,575 to his son) from the Rabine funds that he had been holding in his trust account.

In addition, the special master found that, by improperly transferring to his children funds that he held in trust for his clients, knowing that the clients disputed the amount of his fee, and by failing to provide an accounting to his clients, respondent violated RPC 1.15(c).

As to the other charges, the special master found that respondent violated RPC 8.4(c) and (d) in connection with his bankruptcy petition when he made false representations about his income and failed to list the funds that he had removed from his trust account and disbursed to his children.

Finally, the special master found that respondent violated RPC 1.15(d) by failing to reconcile his trust accounts, failing

to maintain client ledger cards, and permitting his non-attorney wife to sign trust account checks. The special master did not address the charged violation of RPC 3.4(a).

Recognizing respondent's inexperience, the special master asserted that respondent

> cannot justify the removal from Trust to his children's accounts of deposited funds regardless of his inexperience and regardless of his belief that he was entitled.
>
> While one can empathize with a young attorney, who is so inexperienced he uses the wrong Retainer from the wrong State, and then after reviving a case which was dormant for 15 years finds his client's [sic] anxious to get the benefit of the mistaken bargain he made, he knew there was a dispute over the proper fees, he transferred money from his Trust account to his children and he knew there was a pending Order to Show Cause when the money was wired to China.
>
> [SMR22-SMR23].[13]

The special master recommended that respondent be disbarred for his knowing misappropriation of the Rabine funds.

Following a de novo review of the record, we are satisfied that the special master's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

In our view, the record clearly and convincingly demonstrates that respondent knowingly misappropriated his

[13] SMR refers to the special master's report submitted August 28, 2012.

clients' funds when he arranged to have approximately $1.2 million dollars deposited into bank accounts in his children's names and later used those funds to pay his personal debts. Although respondent claimed that the funds were due to him as legal fees for the Sy litigation, respondent failed to establish that he held a reasonable belief of entitlement to those funds. In re Rogers, 126 N.J. 345 (1991).

In 2005, the year that the partners retained respondent, he had been admitted to the bar for only one year and was completely lacking in litigation experience. When Alfred first contacted respondent about the Sy litigation, respondent believed that the matter involved a minor real estate dispute. After agreeing to represent the partners, he was overwhelmed by the magnitude of the case. It had been pending for fifteen years and its file comprised ten boxes.

Nevertheless, respondent undertook the representation. His woeful lack of experience manifested itself at the outset, as illustrated by his failure to prepare an appropriate fee agreement. Respondent simply modified a prior fee agreement that he had obtained from the internet when he was retained to represent the Pengs earlier in 2005. It was a standard form of agreement typically used in personal injury cases in New Jersey. It contained the graduated fee scale of R. 1:21-7(c), which

applies to claims for damages based on tortious conduct. It referred to R. 4:42-11(B), which precludes attorneys from including prejudgment interest in their calculation of contingent fees in tort cases. Rather than inserting his New York office address and telephone number in the agreement, respondent included his New Jersey office information. In sum, nothing in the fee agreement revealed that the case involved New York litigation concerning a business venture.

We now turn to the issue of whether the fee agreement called for calculation of respondent's legal fees based on the clients' individual or group awards. In the agreement, the partners were referred to as "You" and respondent's fee was to be based on a percentage of the net recovery, defined as "the total recovered on Your behalf, minus Your costs and expenses . . . and minus any interest included in a judgment pursuant to R. 4:42-11 (B)." Moreover, respondent treated the clients as a single entity: he prepared one fee agreement listing the names of all of the clients, rather than separate fee agreements for each client; he met with the clients together, not individually; he billed the clients for expenses as a group, not individually; and he communicated with them by sending identical letters to each client.

Furthermore, R. 1:21-7(i) provides that a contingent fee in a matter undertaken on behalf of multiple clients arising out of the same transaction or set of facts must be calculated on the aggregate sum of all recoveries. Based on the language in the agreement, on respondent's treatment of the clients as a group, and on R. 1:21-7(i), the clients' assertion that respondent's fee should be calculated on the aggregate recovery was reasonable.

Despite respondent's courtroom inexperience, he tried the non-jury case in New York, resulting in the entry of a March 24, 2008 judgment of almost $3.5 million in favor of his clients. On August 14, 2009, respondent received a $3,548,506.01 check, including post-judgment interest, from the Commissioner of Finance. When added to the more than $500,000 that respondent had obtained from the Rabine funds on May 5, 2008, he had received more than $4 million on behalf of his clients.

Respondent's clients claimed that he was not entitled to include either pre-judgment interest or the Rabine funds in the calculation of his legal fees. They, thus, took the position that the vast majority of the funds that respondent held in his trust account on their behalf was exempt from legal fees.

Even before the judgment funds were received, respondent's clients voiced objections concerning the amount of his legal

fees. In a July 29, 2009 letter to respondent, Stephen Huang asserted that respondent should not apply his contingent fee agreement to the Rabine funds because those monies had been obtained years earlier. Respondent did not reply to the letter, telling Huang that he had thrown it in the garbage.

The clients, with the exception of Stephen Huang, met with respondent at his New Jersey office on August 1, 2009, shortly before the judgment check was received. Although the testimony concerning the topics discussed at that 2009 meeting was at odds, it is undisputed that the clients disagreed with at least two components of respondent's fee calculation: his plan to compute the fee on their individual awards, rather than on their aggregate recovery, and to take one-third of the recovery, rather than applying the graduated fee schedule appearing in the fee agreement.

Several clients also claimed that, at the meeting, they had objected to respondent's inclusion of prejudgment interest in the amount of the recovery for purposes of calculating his fee. Respondent denied that this discussion had taken place. The clients' August 6, 2009 letter supports their position. In that letter, respondent's clients reminded him that the fee agreement precluded his entitlement to legal fees on any part of the judgment attributable to interest. We find that, had this issue

not arisen during the August 1, 2009 meeting, it is not likely that the clients would have mentioned it in the letter.

Respondent acknowledged that, as of August 1, 2009, he knew that his clients disputed, at least to some extent, his proposed legal fee. Yet, he did not try, either at the meeting with the clients or shortly thereafter, to explain to his clients the legal basis by which he had calculated his fee. He did not inform his clients of their right to request fee arbitration.[14] He did not file a lawsuit to resolve the dispute. Instead, he invited his clients to sue him, an invitation that they later accepted.

Both before and during the disciplinary proceedings, respondent asserted that he was entitled to the fees that he took. He maintained that the fee agreement that he had prepared was erroneous and that he should have drafted an agreement in accordance with New York law, which permits attorneys to include prejudgment interest received by their clients when calculating their legal fees. In addition, he claimed that, because the judge in New York had given Sy credit for the Rabine funds as partial payment of the judgment, he was entitled to a percentage of those monies as part of the total recovery.

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[14] Both New York (New York Disciplinary Rule 2-106E) and New Jersey (R. 1:20A-3) offer fee arbitration programs, at the client's option, to resolve fee disputes.

In essence, respondent pretended that he had entered into a fee agreement completely different from the one that his clients had signed. He calculated his fees based on this non-existent fee agreement. His clients, however, had the right to require that he comply with the express provisions of the agreement that he had prepared. If he believed that the agreement did not accurately reflect the parties' intent, his remedy was to bring the dispute before an appropriate forum for resolution, not to engage in self-help. Indeed, the fee agreement itself provided that respondent could apply to the court for a fee award if the recovery exceeded $2 million. Simply put, we find that respondent's belief that he could take his fees in accordance with an imagined fee agreement was far from reasonable.

Moreover, other circumstances lend support to the notion that respondent did not maintain a good faith belief that he was entitled to the legal fees that he took. Respondent's immediate reaction to the receipt of the August 6, 2009 letter from his clients disputing his fee was to draft a ten-page letter to them in which he warned them that, if they continued to dispute his fee, he would seek more than $270,000 in additional fees. These fees were allegedly earned in connection with appellate and collection services for which respondent had never issued any bills. More egregiously, he threatened to report, as an officer

of the court, possible misrepresentations that his clients had made during the trial about the amount of their losses. If respondent genuinely believed that his former clients had lied to the court about the amount of their damages, he was obligated to take the appropriate action, rather than use this alleged impropriety as leverage to blackmail and bully them to discontinue the fee dispute.

Respondent's method of disbursing his fee was both devious and appalling. The court rules obligated him to deposit the judgment check in his trust account, allow the funds to clear, remove only that portion of his fee that was not disputed (the graduated percentages applied to the aggregate recovery, exclusive of prejudgment interest and exclusive of the Rabine funds) and deposit that amount in his business account. Instead, respondent totally depleted the Rabine funds by issuing two checks, dated August 18, 2009, payable to his children, and depositing the checks in a bank account in the name of his wife or his children, to which he did not have access. Respondent clearly did not intend to have his children benefit from these funds because he removed them from his children's accounts on September 23, 2009, about one month after depositing them.

Respondent received the judgment check on August 17, 2009, the day before a scheduled trip to China. He brought that check

and his checkbook to the bank, intending to disburse all of the funds to his clients and himself. When the branch manager informed him that he could not draw on the check until the funds had cleared, he should have postponed making the disbursements until he returned from vacation.

Claiming that he followed the instructions of the branch manager, respondent issued two checks from the judgment funds in partial payment of his fee, dated the checks August 26, 2009, and made one check payable to his daughter and one to his son. According to respondent, the branch manager agreed to monitor his account and to deposit the two checks in his children's accounts after the funds had cleared.

Pursuant to R. 1:21-6(a)(2), respondent was required to deposit his legal fees in his attorney business account. Instead, he deposited into his children's bank accounts all $1.2 million that he claimed as his legal fees from the Sy litigation. When the special master asked respondent why he had done so, respondent replied that he did not have a personal account, admitting, upon further questioning, that he had an attorney business account. Respondent not only could have deposited, but was bound by the rules to deposit, those checks allegedly representing legal fees, in his business account. If he thought that the checks should have been placed in another

type of account, he could have opened a bank account in his own name.

We find it obvious that respondent placed the funds in his children's account to either conceal them or to disavow any control over them. Because he did not have access to those accounts, he could take the position that he could not be required to restore those funds, should he be ordered to do so in connection with the order to show cause. Although we make no finding in this regard, respondent also may have been motivated to conceal these funds to avoid income taxes.

Respondent claimed that, on September 8, 2009, he reviewed, for the first time, the faxes and letters that his clients had sent, disputing his fee. He, thus, was presented with another opportunity to explain to his clients his position about his legal fees. Instead, as noted above, he threatened his clients.

Furthermore, not only did respondent issue the checks for his fee on August 17, 2009, in the face of a clear controversy about the amount to which he was entitled, he arranged to wire the funds out of the country after he had been sued and after he had submitted a reply to a request for an order to show cause. It is undisputed that, on September 15, 2009, respondent received, by fax, a copy of the petition for an order to show cause that Shih had filed. Respondent replied to that

application on September 17, 2009. He, thus, was aware of the possibility that the court would restrain him from disposing of the Sy funds. Nonetheless, one week later, on September 23, 2009, the very date on which Judge Francis issued an order restraining respondent from disposing of the funds, he arranged to wire them to China, knowing that, after he did so, those funds would be irretrievably beyond the control of the New Jersey courts.

In addition, after respondent was served with the application for an order to show cause in New Jersey, he filed a lawsuit in New York, without disclosing to the judge in New York the filing of the New Jersey complaint.

The New York litigation ended unsuccessfully for respondent on January 25, 2010. The next day, he filed a bankruptcy petition in which he failed to disclose the $1.2 million that he had received in the Sy litigation, listing his income for that year as only $15,000. Moreover, when he was questioned, during his deposition in the bankruptcy case, about the disposition of the Sy funds, he was evasive and lacked candor. Inconsistent with his testimony at the hearing before the special master, respondent testified at the deposition that he had used some of the funds to pay his law school tuition and that he had written

checks to his creditors, failing to disclose that he had wired the funds to China.

Respondent also represented, in the New York disciplinary matter, that the "total amount" that he had received in legal fees in the Sy litigation was $735,908, omitting more than $500,000 that he had taken from the Rabine funds.

Finally, respondent's inclusion of the Rabine funds as part of the amount that he recovered for his clients was patently unreasonable. Those funds had been held in escrow by Sy's attorney, Rabine, since 1992, thirteen years before the clients retained respondent. As noted by Stephen Huang in a July 29, 2009 letter to respondent, he was entitled to at least some compensation for filing a motion for the turnover of the funds. His one-third fee, however, amounted to about $165,000, a sum grossly disproportionate to the amount of time that he spent on that matter. Notwithstanding Judge Weiss' characterization of the Rabine funds as part of the judgment, respondent's position that he was entitled to include those monies as part of the amount recovered for purposes of his calculating his fee was manifestly unfounded.

In summary, respondent's purported belief that he was entitled to more than $1.2 million in legal fees for the Sy litigation was not reasonable because his written fee agreement

clearly did not authorize those fees. According to his clients, respondent's fee should have been about $325,000, almost $1 million less than the amount that he took. Respondent's placement of his legal fees in his children's accounts and his wiring of the funds to China, while he was aware of the imminent order to show cause, belie a good faith belief of entitlement to those monies.

A showing of a reasonable, good-faith belief of entitlement to funds will defeat a finding of knowing misappropriation, even if that belief turns out to be erroneous. Otherwise stated, the existence of a reasonable belief precludes a finding of knowledge that the attorney was using a client's money without authorization.

In _In re Rogers_, _supra_, 126 _N.J._ 345, American Express improperly placed a levy on the attorney's trust account, resulting in the return of a check issued to pay off a client's mortgage, following a real estate closing. The mortgagee, an individual, accepted an initial payment of more than $25,000 and permitted the attorney to pay the $3,500 balance when American Express reimbursed the attorney. After the attorney received the reimbursement, he used the funds for his own purposes, believing that he did not have to satisfy the mortgage (now his personal obligation) out of those precise funds. The Court found that the

attorney reasonably believed that the American Express funds had been converted from escrow funds to his own funds, subject to the satisfaction of the debt. The Court concluded that, although the attorney was incorrect, the misappropriation was not knowing because of his reasonable belief that the funds were available for his use.

In another case, In re Cotz, 183 N.J. 23 (2005), the attorney reasonably believed that he had more funds in his trust account than were actually on hand. Because he had forgotten that he had borrowed $9,000 from a client, some of the monies in his trust account that he believed were his actually belonged to a client. In addition, the bank where the attorney maintained his accounts had erroneously debited more than $10,000 against his trust account, instead of his business account, when business account checks were returned for insufficient funds. Because the attorney did not reconcile his trust account, he failed to detect these chargebacks. The attorney, thus, reasonably, but mistakenly, believed that he had $19,000 in his trust account and was not aware of the shortage.

The Court has held that the burden of proof is on the attorney to establish the reasonableness of the belief:

> Respondent also testified that whenever he withdrew escrow fees in advance of a closing, the withdrawal was based on his assumption that he had an equivalent

> "cushion" in his trust account. However, respondent did not attempt to offer any specific factual basis for that assumption, and respondent's own expert testified that when he performed a reconciliation of the trust account he determined that "there weren't always sufficient funds on hand, and he was always indeed out of trust." Respondent's erroneous belief that he had an equity cushion was unfounded, and <u>respondent failed to offer evidence to sustain the contention that his belief in the existence of an adequate cushion was reasonable or justifiable</u> [emphasis added].
>
> [<u>In re Mininsohn</u>, 162 <u>N.J.</u> 62, 73-74 (1999).]

If the attorney fails to sustain that burden, a finding of knowing misappropriation results. In <u>In re Sommers</u>, 114 <u>N.J.</u> 209 (1989), the attorney in a matrimonial case received an income tax refund check from which he had been ordered by the court to make certain disbursements on behalf of his client and her husband. Instead, the attorney used the check for his personal expenses, claiming that the client owed him legal fees. Sommers offered no documentation, such as a fee agreement or bills issued to his client, to support his claim to legal fees. Moreover, he advanced no credible explanation for his failure to disburse the funds to his client's husband, who had no obligation to pay his wife's legal fees. The Court found that the attorney did not have an honest belief that he was entitled to the refund as his fee. Finding Sommers guilty of knowing

misappropriation of both client (the wife) and escrow (the husband) funds, the Court disbarred him.

Similarly, the attorney in In re Frost, 171 N.J. 308 (2002), failed to sustain his burden of proving that he reasonably believed that he was entitled to trust funds that he had taken. In that case, the attorney settled a products liability lawsuit and believed that he had obtained the consent of the workers' compensation carrier to compromise its lien. He, thus, sent a check to the carrier for the compromised amount. The carrier, however, returned the check, asserting that it had not agreed to reduce its lien. Frost claimed that, because he had tendered the funds to the carrier, and the carrier had rejected the tender, the funds belonged to his client. He then persuaded his client to lend him the funds.

The Court found that Frost knowingly misappropriated the carrier's funds. The Court noted that, as an escrow agent, Frost held the funds for the benefit of both his client and the carrier. He, therefore, needed the consent of both parties before he could borrow the funds. It was undisputed that Frost did not seek or obtain the carrier's consent to borrow the money. The Court rejected as not credible Frost's contention that he reasonably believed that, once the carrier rejected the tender, it no longer had an interest in the funds.

Here, too, for the reasons stated above, we find that respondent's claim that he believed that he could enforce a fee agreement that was only a fantasy is neither reasonable nor credible. We, therefore, find him guilty of the knowing misappropriation of a portion of the Sy judgment and the Rabine funds.

As to the other charges, the record establishes, and respondent admitted, that he violated RPC 1.15(c) by failing to safeguard disputed funds. Respondent's misrepresentation of his income on his bankruptcy petition violated RPC 8.4(c) and (d). Although the complaint also charged that, by making this misrepresentation, respondent unlawfully obstructed another party's access to evidence, the more applicable charges are RPC 8.4(c) and (d). We, thus, dismiss the charge that respondent violated RPC 3.4(a).

Respondent also admitted violating RPC 1.15(d) and R. 1:21-6 by allowing his wife, a non-attorney, to sign his attorney trust account checks. The complaint also charged that respondent violated this rule by failing to regularly reconcile his trust accounts and by failing to maintain client ledger cards. The record, however, does not contain clear and convincing evidence of those two infractions.

We also find that respondent's failure to provide his clients with an accounting violated RPC 1.5(c) and, because he had been ordered to do so by a judge, and failed to comply with that order, respondent also violated RPC 3.4(c).

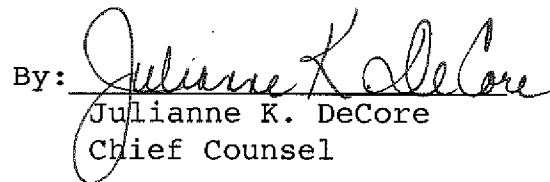
Finding that respondent knowingly misappropriated client funds, four members determined that he must be disbarred. In re Wilson, 81 N.J. 451 (1979).

Member Clark filed a separate dissent, voting for a three-month suspension. Although Members Doremus and Zmirich joined in the dissent, they voted for a one-year suspension.

Vice-Chair Frost and Member Baugh 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
Morris Yamner, Esq.

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

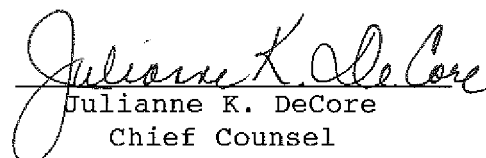
In the Matter of Feng Li
Docket No. DRB 12-310

Argued: March 21, 2013

Decided: April 3, 2013

Disposition: Disbar

Members	Disbar	One-year suspension	Three-month Suspension	Dismiss	Disqualified	Did not participate
Pashman	X					
Frost						X
Baugh						X
Clark			X			
Doremus		X				
Gallipoli	X					
Wissinger	X					
Yamner	X					
Zmirich		X				
Total:	4	2	1			2



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Chief Counsel