SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-119
District Docket No. XIV-2008-055E

IN THE MATTER OF

HAL J. SHAFFER

AN ATTORNEY AT LAW

Decision

Argued: September 17, 2009

Decided: November 10, 2009

Walton W. Kingsbery, III appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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 Ethics Master Patricia B. Santelle, Esquire, based on respondent's knowing misappropriation of trust

funds in four client matters. For the reasons expressed below, we agree with the special master's recommendation.

Respondent was admitted to the New Jersey bar in 1983. At the relevant times, he was a partner with Shaffer & Scerni, LLC, and its predecessors, Shaffer, Bonfiglio, Scerni & D'Elia, and Shaffer, Bonfiglio & D'Elia.

Respondent has no disciplinary history. Since September 26, 2005, he has been on the Supreme Court's list of ineligible attorneys due to nonpayment of the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection.

In November 2007, the Office of Attorney Ethics ("OAE") filed a five-count complaint against respondent. The first four counts charged him with knowing misappropriation of trust funds in four client matters.[1] The fifth count charged him with conduct involving dishonesty, fraud, deceit and misrepresentation (RPC 8.4(c)) with respect to his conduct as

[1] The specific rules cited in support of the knowing misappropriation charge are RPC 1.15(a) and RPC 8.4(c). In addition, the complaint alleged that respondent violated the principles of In re Wilson, 81 N.J. 451 (1979) (disbarment for attorneys who knowingly misappropriate client funds), and In re Hollendonner, 102 N.J. 21 (1985) (disbarment for attorneys who knowingly misappropriate escrow funds).

trustee of certain funds given to his daughter Samantha by her maternal grandfather ("Samantha's trust").

The complaint was amended in May 2008 to include, in the four client matters, charges of gross neglect, lack of diligence, failure to communicate with clients, negligent misappropriation of client funds, failure to make prompt disposition of trust funds, and improper distribution of disputed trust funds. With respect to Samantha's trust, the amended complaint included the same charges above, with the exception of the lack-of-diligence and failure-to-communicate alleged violations.

The special master presided over a five-day hearing, which took place on the following dates: September 24 and 25, October 1 and 2, and November 5, 2008. She received testimony from OAE Assistant Chief of Investigations Jeanine Verdel, respondent, and several of his former attorney and support-staff employees.

On March 4, 2009, the special master issued her report, finding that respondent had knowingly misappropriated trust funds in all four client matters and dismissing, for lack of clear and convincing evidence, the knowing misappropriation charge in connection with Samantha's trust.

Before setting out the facts underlying the charges in the four client matters and Samantha's trust, we first provide some relevant general information regarding the operation and management of respondent's firm.

**THE HISTORY OF RESPONDENT'S FIRM AND HIS INVOLVEMENT IN THE BANKING INDUSTRY**

Respondent testified that, in 1997, he and two of his partners at the New Jersey office of Dilworth Paxson, LLP, left that firm and formed Shaffer, Bonfiglio & D'Elia, in Cherry Hill. By 1999, the office had expanded and relocated to Mount Laurel.

In August 2000, according to the OAE's attorney registration system, respondent's firm became known as Shaffer, Bonfiglio, Scerni & D'Elia. In October 2002, the firm name changed to Shaffer & Scerni. Two years later, the firm moved back to Cherry Hill, where it remains today. Respondent has always held a ninety-to-ninety-five percent equity interest in his firm.

In addition to the practice of law, respondent was involved in the banking industry. From 1995 until its sale in 1999, he served as chairman of the First Bank of Philadelphia.

Thereafter, he started a new bank called InterSTATE Net Bank ("ISNB"), which held its first board of directors meeting in June 2000.

Respondent was chairman, president, and CEO of ISNB from May 2001 until his resignation, in October 2004. During this three-year period, he claimed, his position with the bank was a full-time job.

Respondent stated that, from 2000 until the demise of his law firm, in 2005,[2] he did not have day-to-day responsibility for the law firm's files because his work at ISNB was "a very, very time consuming, 24/7 type situation." This kept him from being physically present at the law firm.

In addition to the start up of ISNB, in 2000, respondent's firm expanded in the same year, when it acquired a "foreclosure group," which included attorneys Martin Weisberg and Lloyd S. Markind. Weisberg testified that the foreclosure group was responsible for a few thousand files and that 100 to 200 files were opened each month. Markind testified that he alone handled

[2] According to the OAE's records, Shaffer & Scerni is a going concern.

more than 100 matters a year for client Wilshire Credit Corporation ("Wilshire"), a national mortgage server.

**RESPONDENT'S BOOKKEEPING STAFF AND RECORDKEEPING SYSTEM**

Respondent's firm had its business and trust accounts with Commerce Bank. In addition, the firm had a business account with Audubon Savings Bank and a trust account at ISNB. Most of the transactions at issue involved the Commerce accounts, although, as will be discussed later, the ISNB trust account played a role in respondent's defense.

Respondent's former employee, Margaret Forte, testified that she was a litigation paralegal with the firm from 1997 through early 2002, when she became the office administrator. Forte left the firm in March 2003.

As office administrator, Forte had access to information pertaining to the business and trust accounts. She also had access to respondent's personal accounts at Audubon Savings and ISNB. With respect to the business and trust accounts, Forte made account deposits, wrote the checks, reconciled the bank statements, and provided the reconciliations to the firm's accountant on a quarterly basis.

Forte reported directly to respondent. Every morning, she would either see respondent or send him an email "telling him what the bank balance was, what checks were received in the morning mail from clients, what – essentially what we had for deposits. And then what we had for check requests from the employees for like filing fees and those types of things." Forte provided respondent with the balances as they appeared in the firm's checkbook and on Commerce's on-line account information system. Forte testified that, "depending upon the cash flow or the money available or not available," the process "would be repeated again in the afternoon."

According to Forte, copies of the checks and deposit slips were given to respondent on a daily basis. If he was not in the office on that particular day, the copies were left on his desk so that he "could see what moneys were coming into the firm." Forte detailed respondent's involvement in the deposit of checks:

> When Hal and I would speak he would ask me what checks were received and I would go over the checks.
>
> And depending upon where – who the checks were from, whether they were from this particular client or if it was from an insurance company for a personal injury settlement or if it was for a payment of

> legal fees and expenses, then he would tell me, you know, put that in business, put this in trust. Or, all of that goes into the business account.
>
> And obviously sometimes, you know, I would say to him, we have a check from . . . one of our large clients, and he would say, okay, put it in the business account.
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> [1T26-7 to 21.][3]

According to Forte, the firm's business account carried a negative balance "four out of five days a week." When the business account needed to be replenished, respondent would direct her to transfer money from the trust account into it. Sometimes, trust account funds were transferred to the business account for the payment of fees and costs.

On other occasions, respondent would direct Forte to write a check from his personal account to replenish the business account. That often required "playing" with the accounts. Forte explained:

> And quite frequently there wasn't enough money in his personal account, but what would happen is he would have me write the check from his personal account, put it

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[3] "1T" refers to the transcript of the September 24, 2008 hearing before the special master.

into the Commerce Bank account to make that a positive, and then when his personal account was a negative he would have me write from the operating account to make his personal account positive.

It was a constant floating, so to speak, of the checks. He would — he obtained a loan, I believe from Audubon Savings Bank at one point, increasing the firm's credit line.

I, mean there was just all kinds of things. At one point I had to go to Moorestown to pick up checks from — I think the company was U.S. Claims.

. . . .

[W]e were always transferring money from one to the other.

[1T37-22 to 1T38-11;1T38-19 to 20.]

According to Forte and one of and the firm's attorneys, Amy Santa Maria, respondent was in the office every day. Even after he formed ISNB, he tried to be in the office at least one hour a day. Forte testified that respondent had "full knowledge of what was going on at the firm the entire time . . . whether [he was] there or not."

Respondent was the only person to whom Forte reported the financial information; he determined whether any financial information was to be released to other partners. Forte explained that, if respondent "didn't want certain financial

information released to other partners then they didn't receive that information."

For his part, respondent would not concede that Forte informed him of the trust account balances every day, or even every other day. He claimed that she would do so "maybe" once or twice a week.

According to respondent, he had a general idea of what was going on with the accounts because of the copies of "certain checks" that were left on his desk. He claimed not to have specific knowledge of emails from Forte, but he did recall having received communications about account balances, at least every other day, from Forte's successor, Stephanie Courant-Heller.[4]

Forte testified that, beginning in 2001, the firm's trust and business account records consisted of paper files and the "Juris billing system". She explained the latter:

> The Juris billing system was the attorney/client billing system as well as

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[4] When this witness worked at respondent's firm, her surname was Courant. As of the date of her testimony, her last name was Heller. Because both names are mentioned in the record, we have joined and hyphenated her names for ease of reference.

> accounts receivables, payables, the trust accounts and the business accounts were through that entire system. It was the whole financial picture, so to speak, of the firm.
>
> And then we also had the paper files of any reports and things that were generated from that.
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> [1T22-15 to 22.]

As office administrator, Forte personally entered the information into the Juris system on a daily basis; therefore, she stated, the system was always up-to-date. The Juris history was printed out once a month and given to the firm's accountants on a quarterly basis.

Inconsistently, respondent stated that he had access to the Juris system and that he "never had access to this Juris system." He claimed that he never went into the system, as he did not know how to do it. Based on her conversations with other employees, OAE investigator Verdel understood that respondent had access to the Juris system, but she did not know whether he had actually ever touched it.

Forte testified that the increased number of files generated by the foreclosure group required the firm to provide an assistant for her. The assistant was Courant-Heller, who had been the firm's receptionist since March 1997.

When Courant-Heller became Forte's assistant, in early 2002, she helped Forte with the firm's billing, deposited and posted checks under Forte's supervision, and prepared trust account deposit slips on a daily basis. Respondent testified that, when Forte left the firm, he appointed Courant-Heller as the "de facto office manager," although her title remained "administrative assistant." Courant-Heller left the firm in early 2005.

Courant-Heller testified that, when she took over Forte's duties, she issued checks, paid bills, and managed the payroll. She was privy to information regarding the firm's trust and business accounts, as well as respondent's personal accounts.

Respondent was Courant-Heller's supervisor. According to Courant-Heller, respondent asked to be daily apprised of the account balances and of any checks that came in the mail. Courant-Heller communicated with him up to three times a day, via personal discussions, emails, and phone calls.

Courant-Heller had taken some college courses, but she had no training in bookkeeping or financial accounts. Thus, the job was "very overwhelming" to her. She was afraid of "the financial stuff because it wasn't really stuff that [she] had done."

Courant-Heller was never told that she was not doing her job correctly, although "there were probably things that I didn't always keep up on." For example, she did not always keep up with the payment of bills, although she doubted that it was "technically" her fault, inasmuch as "some bills weren't being paid."

At some point, Courant-Heller began to transfer funds between the trust and business accounts, at respondent's direction. On each occasion, he would tell her that "money was coming in or we were owed that money."

Courant-Heller also entered time into the Juris system. She did not know how to keep the ledgers on the system, however. She understood that employee Robin Baumholtz and, later, employee Keith Herbert did that.[5]

Respondent testified that he had hired Baumholtz to assist Courant-Heller, as the job was over her head. According to Courant-Heller, Baumholtz came into the office once or twice a

[5] Respondent testified that Robin Baumholtz was hired in 2002, as the firm's part-time bookkeeper, and that it was she who performed the trust account reconciliations. Keith Herbert was hired by respondent, in April 2004, as the firm's administrator.

week to reconcile the trust account. The reconciliations were given to respondent. She did not know of anyone else who saw that information.

Courant-Heller concluded her testimony by stating that she was never properly trained "for any of this" and that she wanted help but "never really got it." The work was "overwhelming," but "no one ever sat down with [her]." Other employees agreed that the duties assumed by Courant-Heller were more than she could handle. Forte testified that, although Courant-Heller had covered for her when she was on vacation, Courant-Heller did not have the extensive knowledge required for the position. In particular, she had not been trained to perform reconciliations and do the trust accounting.

Attorney Markind described Courant-Heller as "not the most skilled at business management," as evidenced by "the accuracy of our invoices." Respondent testified that there were "many times" when Courant-Heller had deposited fees and costs into the firm's trust account.

At some point, attorney Weisberg testified, he became aware that Courant-Heller had been depositing sheriff sale deposit monies into the business account. He told her that she was commingling and that the deposit monies were to be placed into

the trust account. Courant-Heller confirmed Weisberg's testimony, stating that she did not know that the deposits were to be placed into the trust account.

Attorney Mark Kancher, who was employed by respondent's firm from the summer of 1999 until February 28, 2005, also confirmed that Courant-Heller was not up for the demands placed upon her by respondent. At the ethics hearing, when questioned by respondent, Kancher provided his opinion of Courant-Heller's abilities:

> Well, I have two hindsights. I have an interim hindsight and a more complete hindsight, Hal.
>
> The interim one was that [Courant-Heller] was really not suited for the job. And that's how it appeared, not being familiar with what was going on with her and the job.
>
> But my later hindsight came after you and I got into litigation and I started talking to [Courant-Heller] more as a witness than as a bookkeeper, and any difficulties that [Courant-Heller] might have had as a bookkeeper were grossly magnified by demands that you were putting on her on a daily basis.
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> [2T57-7 to 19.][6]

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[6] "2T" refers to the transcript of the September 25, 2008 hearing before the special master.

OAE investigator Verdel testified that, when the firm's trust account was out of trust, it was Courant-Heller who was carrying out the duties of the office administrator. However, Verdel would not concede that the trust account problems began when Courant-Heller was placed in that position. Verdel did not compare "the dates of who was in and . . . when the whole problem started." Instead, she focused on a particular time frame, beginning with a client trust account deposit in 2002, when Forte was still the office administrator.

**RESPONDENT'S CONTROL OF THE FIRM'S BANK ACCOUNTS**

The transactions and trust account balances at issue in the client matters occurred between August 2002 and February 2004. The testimony of several witnesses, including respondent, established that he had total control over the firm's business and trust accounts.

Forte testified that, prior to her departure, in March 2003, respondent was "always moving money around." He "made all the decisions regarding the moneys coming in and out of all the accounts with the firm." He determined "when the money would be disbursed on files and where they would be disbursed to, whether it was to the clients or to other accounts." Monies were

transferred between trust accounts, and all transfers were at the direction of respondent.

Courant-Heller testified that no one other than respondent was involved in handling the trust and business accounts. "In the last year," Courant-Heller stated, there were shortages in the firm's business account "probably a couple times" per week. Respondent would tell her what to do when the shortages occurred.

Respondent testified that, between January 2003 and January 2004, no one other than he had signatory authority over the Commerce trust account. He approved all transfers from the trust account to the business account.

In addition, respondent stated, no one other than he and Courant-Heller were provided with bank statements for the trust account. All four attorney witnesses testified that, during the entire course of their employment with respondent's firm, they had no access to the trust or business accounts or to account information.

Markind and Weisberg testified that, in their experience, if money came into the firm, an attorney would give it to Forte or Courant-Heller to deposit into the appropriate account. According to all the attorneys, when an attorney required a firm

trust account check to be issued, he or she would complete a form and submit it to Forte or Courant-Heller. In turn, Forte or Courant-Heller would check the balance in the account and the amount reflected on the Juris ledger for that particular client matter and give that information to respondent. Forte or Courant-Heller would seek respondent's approval prior to the issuance of the check, which was always signed by respondent. The same procedure applied to business account check requests.

With the exception of Santa Maria, the attorneys had no involvement with the business account. Santa Maria recalled that, when attorneys Suzette Bonfiglio and Vincent D'Elia left the firm, in 2002, she became an authorized signatory on the business account "for a short period of time" because respondent was in the process of forming ISNB and was not always in the office.

Santa Maria signed business account checks only after respondent had approved the check requests, and then only if he was not in the office to sign them. Despite her authority to sign business account checks under limited circumstances, Santa Maria had no access to any business account information.

**THE OAE INVESTIGATION**

OAE investigator Verdel testified that the OAE's investigation of respondent began when it received from the bank an overdraft notice for a $6528 trust account check to Batterman Engineering, LLC ("Batterman Engineering"), dated November 5, 2003. During Verdel's investigation, she did not determine the overall amount by which the trust account was out of trust. Instead, she looked at the trust accounts of individual clients, which was simpler, in light of "the volume of information involved here." Verdel compared the bank records with the deposits and disbursements for the clients, based on the Juris ledger history.

Verdel testified that respondent did not cooperate in the investigation. For example, the OAE was not provided with a full print-out of all client ledgers, at the initial demand audit, in March 2004. Moreover, despite the OAE's requests, respondent did not provide all of the firm's ledger cards.

Respondent vigorously denied that he knowingly misappropriated any client funds. As seen below, he blamed the trust account shortfalls on his lack of supervision over the firm's bookkeeping and on the staff. He testified that, when he first learned that the trust account was out of balance, in

August 2003, he "was freaking out." He could not recall how he had learned that the account was out of trust, except that he had "a real sense that something was wrong." Nevertheless, he claimed, he believed that the account was back in trust as of October of that year.

Respondent described the situation as a "perfect storm," comprised of his absence from the office, "an inexperienced administrative person," the change in practice, the plethora of files, and his lack of vigilance over the firm's record-keeping. Nevertheless, he stated, "I did what I had to do to protect the clients. Whether that was borrowing money, depositing legal fees, doing – making sure that no one suffered any loss whatsoever." He concluded by saying:

> Looking back on it it's amazing to me what one bounced check can do to someone's career. I take full responsibility for that bounced check, but at the end of the day no clients were hurt, all issues were resolved and really the only one who's subject to any real issues is this proceeding against me. And that's what I have.
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> [5T31-11 to 17.][7]

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[7] "5T" refers to the transcript of the November 5, 2008 hearing before the special master.

Respondent's defenses to each knowing misappropriation charge are discussed below.

**COUNT FOUR – THE CONSECO FINANCE SERVICE CORPORATION/GREEN TREE SERVICING, LLC MATTER**

Green Tree Servicing, LLC ("Green Tree"), was the successor to Conseco Finance Service Corporation ("Conseco"), a national mortgage servicer. Much of the firm's work for Conseco/Green Tree, as well as for Wilshire, involved the purchase of properties at sheriff's sales.

The firm's procedures for handling Conseco's and Wilshire's funds were the same. When a property was purchased at a sheriff's sale, the sheriff would have to be paid that day. Thus, the client would advance the funds to the firm, which would place them in its trust account until it was time to give the funds to the sheriff. Prior to the completion of a check request for the issuance of a trust account check for the funds, the client would inform one of the attorneys that the money had been wired into the firm's trust account. The attorney then would confirm with Courant-Heller that the funds were there. If the sale did not go forward, the funds were returned to the client.

Neither Conseco, nor Green Tree, nor Markind, nor Weisberg ever consented to the firm's use of these clients' funds for any purpose, including the payment of bills, other than their intended use. Markind testified that the firm charged a flat fee for most of the work for Wilshire and Conseco. The clients were billed monthly and paid the fee by check. Markind was aware of no occasion on which fees were deposited into the trust account.

On August 8, 2002, Conseco made two wire transfers into respondent's trust account, totaling $580,000, for use at a sheriff's sale in a matter titled Ghahary. The deposit was recorded on the Juris ledger.

Although the sheriff's sale did not take place, the funds were not returned to Conseco. According to Verdel, in February 2003, Conseco requested that the funds be returned to it. However, respondent did not issue refund checks until September 25, 2003. The checks were not presented for payment until October 1, 2003.

Between August 8, 2002 and October 1, 2003, the Conseco/Green Tree funds were invaded on a number of occasions. For example, on April 10, 2003, respondent issued to Chuck Hughes trust account check no. 2105, in the amount of $50,000.

The check was cashed on April 16, 2003, at which time the trust account balance dipped to $552,291.57. The next day, respondent transferred $40,000 from the trust account to the business account. This transaction, in addition to a $2,266.48 trust account check to the Union County Sheriff, reduced the trust account balance to $510,025.09.

As of June 2003, $580,000 should have remained in trust for the Ghahary matter. By the end of the month, however, there was only $275,659.47. By the end of July 2003, the balance was under $200,000. In August 2003, the balance never rose above $300,000.

In September 2003, several deposits into the trust account raised the balance above $580,000. On September 12, 2003, $672,500 was wired to the trust account by Junto Investments, which raised the balance to $860,148.06. In addition to the Junto deposit, respondent deposited $550,000 in personal monies.

Specifically, on September 23, 2003, a bank named "The Bank" loaned $50,000 to respondent, which was deposited into the trust account and recorded on the Juris ledger on the following day. On September 29, 2003, Parke Bank loaned $500,000 to respondent, which was deposited into the trust account on that same date. According to Verdel, the Parke Bank loan "allow[ed]

the repayment of the moneys to go back to Conseco on the Ghahary matter."

According to the Juris ledger, between July 8 and September 17, 2003, there were ten transfers of Ghahary funds from the trust account to the business account, totaling $167,600. In addition, on August 18, 2003, respondent directed the issuance of a demand debt for a certified check, in the amount of $32,602 to Samantha DePerro ("per: fax from Hal Shaffer").

Respondent acknowledged that the trust account did not have sufficient funds in either July or August 2003 to return the Ghahary monies to Conseco/Green Tree. He acknowledged that, "from a technical perspective and an ethical perspective," the Conseco/Green Tree funds should have remained intact between August 2002 and October 2003. However, based on the "accounting scenario that existed and the failure to adequately document what was transpiring, there was a tremendous mistake that was made."

Respondent testified that, between August 2002 and September 2003, he was not reviewing the firm's trust account statements. Moreover, he claimed that the reconciliations prepared by Baumholtz did not show that the account was significantly out of trust.

With respect to the ten transfers of funds between the trust and business accounts, respondent testified that Courant-Heller had informed him that these individual amounts represented attorney fees that were due from Conseco. Based on that information, he had authorized her to transfer the funds to the business account. He undertook no independent analysis, choosing instead to rely on Courant-Heller's representation and also on Weisberg, who received the monthly invoices for Conseco.

Respondent explained that, when Courant-Heller had come to him and said that "we need to get the money back" to Green Tree, he had deposited $500,000 into the trust account on September 24, 2003 so that the checks to Green Tree would clear. At that time, there was no way he could determine the accurate balance in the account because "the books were in a total shambles." He claimed that, without the $500,000 deposit, the firm would not have been able to give Conseco its $580,000.

Notwithstanding respondent's claim, the trust account statement shows that the $500,000 was not deposited until September 29, 2003, four days after the a trust account refund was issued to Conseco.

**COUNT ONE - THE LAURA READ MATTER**

Kancher testified that he had represented Laura Read in a multi-party personal injury action, arising out of a 2001 auto accident. The cost of the expert witness in that matter, Batterman Engineering, was shared by three other parties to the litigation, each of whom advanced $2257 to respondent's firm. Verdel verified that the three $2257 checks were deposited into respondent's Commerce trust account in October 2003. The deposits were recorded on the Juris ledger and totaled $6771.

On November 5, 2003, respondent issued trust account check number 2172 to Batterman Engineering, in the amount of $6528. According to Kancher, at that time, the $6771 advance payments from the other firms were the only trust funds on account of the Read matter.

According to the Commerce trust account statement, on November 12, 2003, the total trust account balance was $12,180.77, of which $6771 still belonged to the Read matter because the check to Batterman Engineering still had not been presented for payment. On November 13, 2003, $2,068.75 was deposited into the account, raising the balance to $14,249.52. On that same date, $11,000 was transferred from the trust account to the business account, a transaction that invaded the

Read funds and left $3,249.52 in the trust account. On November 14, 2003, $1000 was transferred from the trust account to the business account, whereupon the Read funds were again invaded and the trust account balance was reduced to $2,249.52.

On November 14, 2003, the $6528 Batterman Engineering check was presented for payment and bounced, leaving the trust account with a negative balance of $4,278.48. When Verdel asked respondent about the overdraft, he stated to her that "there was an error in transposition." Yet, no such error was ever pointed out to her.

Respondent conceded that he could not identify a specific error that had taken place. He theorized: "When you ask your administrative assistant, do we have the money? And she says, yes, and you can't figure out why it's not there, it's a clerical error."

According to Courant-Heller, it was not her understanding that a "clerical error in transposition" on her part had caused the check to bounce. Moreover, she claimed, respondent never told her that she had made any such error, she did not make any such error, and she never claimed to have made such an error. Rather, she recalled that the check likely bounced due to the

$12,000 transferred to the business account on November 13 and 14, 2003.

Verdel testified, and respondent concurred, that the $12,000 transfers represented fees that were due to the firm in other matters and that they were not approved by Read. One of the client matters was Wayne Shulik, whom respondent allegedly charged a $10,000 flat fee to represent him in a divorce matter.

Verdel testified that the Juris ledger reflected a $10,000 deposit into the firm's trust account on April 23, 2003, which was credited to the Shulik matter. The Juris ledger also showed that, on November 13, 2003, this $10,000 was disbursed to respondent's firm. Yet, Verdel testified, one month earlier, on October 14, 2003, the trust account balance was only $14.18, which was well over $9000 short of what should have been in the account for the Shulik matter at that time. When Verdel asked respondent for an explanation, he repeatedly stated that "it was [Courant-Heller's] fault and there were bookkeeping problems and there were all kinds of problems." Beyond this, however, respondent never helped the OAE determine "what the real source of the problem was."

In addition to having stated to Verdel that the Batterman Engineering check had bounced, first because there was an error

in transposition and, second, because the $12,000 represented fees that were due to his firm ($10,000 of which were for the Shulik matter), respondent claimed, at the disciplinary hearing, that the Read matter was not out of trust because there was $38,000 in the ISNB trust account. Respondent testified that he had forgotten about that account, because he had not been receiving the statements, which, he claimed, were directed to Forte and then just put aside by Courant-Heller. Respondent could not explain why the statements were not given to him.

As a result of the bounced check, respondent "had to sort of make sure that everything got back to any client during that entire time period and start a new trust account that had a zero balance, basically." He also added Kancher as a signatory on the ISBN account "to calm any concerns about what was going on." Kancher agreed that he had become an authorized signatory on the ISNB trust account as a result of the bounced check and the OAE's ensuing audit.

The ISNB trust account had been created as the result of a dispute between respondent's firm and the firm where Kancher previously worked. Kancher testified that, when he joined respondent's firm, litigation arose as a result of his former firm's claim to a portion of the attorney fees recovered in

cases that Kancher had taken with him. Respondent testified that $50,000 had been escrowed as part of the dispute between Kancher and his former firm. At some point, the parties reached a settlement. $38,000 of the $50,000 was determined to be "firm moneys."

Forte testified that, at some point, respondent directed her to transfer $50,000 from the Commerce trust account into the ISNB trust account. On cross-examination, she stated that the transferred monies consisted of respondent's calculation of the projected legal fees and costs to his firm and Kancher's former firm on the disputed files. After the funds were placed into the ISNB account, respondent directed her to transfer the firm's projected fees to the business account, prior to the litigation's resolution.

According to Courant-Heller, in approximately November 2003, as she and respondent were sorting through records in preparation for the firm's relocation from Mt. Laurel to Cherry Hill, they "discovered" the ISNB trust account. The account balance was $38,000.

Respondent testified that, prior to directing Courant-Heller, in November 2003, to transfer the $12,000 from the trust account to the business account, he had confirmed with her that

$10,000 of the funds consisted of the fee from the Shulick matter, and that the remaining $1000 represented sheriff's fees. He knew that the Shulik funds were in the Commerce trust account because he was the only person involved in the Shulik matter, and he knew that he had not instructed Courant-Heller to transfer those funds previously.

Respondent stated that he had specifically asked Courant-Heller if the funds were in the account; she said that they were. He, therefore, relied on her representation and did not take affirmative steps to confirm the source of the $12,000 transferred out of the Commerce trust account into the business account on November 13 and 14, 2003. He maintained a belief that $38,000 was still in the Commerce trust account because he had not remembered that the ISNB trust account existed. He considered the Commerce and ISNB trust accounts to be one and the same.

Respondent was shown the Commerce trust account statement, dated October 31, 2003, which reflected a $14.18 balance on October 14, 2003. Moreover, respondent agreed that, as of November 13, 2003, the Commerce trust account did not contain the Shulick fee.

According to respondent, the $10,000 Shulik fee was part of the $38,000 that had been segregated in the ISNB trust account as a result of the dispute involving Kancher's former firm. However, he did not realize that that money had been segregated until after the office had moved and he began to investigate "what was really going on." At the ethics hearing, it was pointed out to respondent that, when he had directed Courant-Heller to transfer funds out of the Commerce account, these funds could not have belonged to Shulik. Respondent stated: "That money – the firm had made a mistake in not including the $38,000 as part of the trust account accounting. It was a mistake. It was just – period, end of story."

**COUNT TWO - THE WILSHIRE CREDIT CORPORATION MATTER**

As stated previously, respondent's firm represented Wilshire in foreclosure matters. Verdel testified that, according to the Juris ledger and the Commerce trust account statement, on September 26, 2003, $242,034 in Wilshire funds were deposited into the trust account.

Markind testified that the funds were to be used to purchase a foreclosed property in the Carratura matter, which was scheduled for sheriff's sale on September 30, 2003.

On September 29, 2003, respondent issued trust account check number 2167 in the amount of $48,406.80, payable to the Essex County Sheriff, in advance of the September 30 sheriff sale. Thus, $193,627.20 of Wilshire's funds remained in trust for the Carratura matter.

The sheriff's sale was postponed to October 14, 2003. As a result, the $242,034 was to be returned to Wilshire immediately. According to Weisberg, the firm's agent would have returned the check to the office by October 1, 2003. The Juris ledger credited the unused funds to the trust account on October 3, 2003.

Verdel testified that the Juris system showed a $193,627.20 balance for the Carratura matter on September 29, 2003. The next day, the trust account balance was $627,631.82. Yet, as of October 1, 2003, the trust account balance was down to $12,631.82. On October 7, 2003, respondent issued trust account check number 2168, payable to Wilshire, in the amount of $242,034.

The depletion of $615,000 from the trust account between September 30 and October 1, 2003 was the result of two transactions that took place on October 1, 2003: the payment of the two trust account checks totaling $580,000, which had been

issued to Green Tree, on September 25, 2003, in the Ghahary matter and a $35,000 transfer from the trust account to the business account. The Green Tree checks were not related to the Carratura matter.

To Markind's knowledge, Wilshire never gave the firm its consent to the use of funds for any purpose other than that for which they were wired into the trust account. Markind never authorized the use of the funds for anything other than the Carratura matter.

As a result of the removal of $615,000 from the trust account on October 1, 2003, there were insufficient trust funds to cover the $242,000 check to Wilshire until after respondent deposited $140,000 in personal funds, on October 10, 2003. The October 7, 2003 refund check to Wilshire was not presented for payment until October 14, 2003.

Between October 1 and 9, 2003, the trust account balance ranged from $12,631.82 to $103,151.18. During this time, however, the balance should have been at least $193,627.20.

With respect to the Carratura matter, Markind believed that the delay between the date of the check (October 7, 2003) and the date it was presented to the bank (October 14, 2003) was the

result of the delay in respondent's signing it, prior to its being sent to Wilshire via FedEx.

Markind testified that the client had been calling him because of what it perceived to be a delay in its receipt. Markind repeatedly prodded respondent to get the check issued and signed. Finally, Markind drove to respondent's ISNB office, had him sign the check, and then mailed it to the client.

Between the time that the firm received the Carratura funds from Wilshire and the time that they were either used for the transaction or returned to the client, the firm was not authorized to use them for another purpose. Weisberg believed that the funds were to be maintained in the trust account. He had never consented to the firm's use of Wilshire's funds in any other client matter.

Respondent acknowledged that, on October 1, 2003, the balance in the Commerce trust account was $12,631.82. He also agreed that two Green Tree checks in the Ghahary matter, which were presented and paid on October 1, 2003, had depleted the trust account to $12,631.82. He did not know, however, that, when the checks were presented to the bank for payment, there were insufficient funds to pay both Green Tree and Wilshire.

Respondent claimed that he did not know to what extent the trust account was out of balance.

Respondent agreed that, other than the $48,000 sent to the sheriff, Wilshire's $242,000 should have remained intact in the trust account. The following exchange occurred at the ethics hearing:

> [Presenter]:
>
> Q. Okay. The funds were, in fact, invaded and remained substantially almost totally depleted for – well, more than ten days during a period of time when they should have remained on deposit?
>
> [Respondent]:
>
> A. Mr. Kingsbery, I agree with you and I was not very happy about knowing about this situation. As soon as I realized what had occurred I didn't want anyone to be hurt in any way, shape or form. I took my own funds and popped it into the account to make it whole.
>
> [5T66-6 to 15.][8]

Nevertheless, at the time he wrote the two Green Tree checks in the Ghahary matter, respondent knew that the account

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[8]"5T" refers to the transcript of the November 5, 2008 hearing before the special master.

was out of trust. Again, however, respondent refused to acknowledge that, by writing out these checks, he was going to invade other clients' funds:

> No. I knew that I was going to — whatever clients requested — whatever moneys that a client had given the firm that was properly accounted for I wanted to make sure that the clients received those funds back. There was never a question of whether or not a client was going to receive their moneys.
>
> [5T68-18 to 24.]

Respondent challenged the presenter, stating: "[Y]ou're not going to get me to admit that I took these moneys wrongfully." Again, "I didn't intentionally take the money and give it to myself, that I did not do." His defense was simply that "the firm was messed up from an accounting perspective, period, end of story."

Respondent claimed that he did not know what the trust account balance was at the time the Ghahary checks were written. Yet, he made a deposit to make sure all the checks would clear. He obtained the figure required to "cover" the outstanding checks from Courant-Heller.

On October 9, 2003, the balance in the account was $103,000. Thus, to refund Wilshire's money, the account needed $140,000, which respondent deposited into the trust account. He

agreed that the firm's account was out of trust by more than $180,000 on that date, "subject to the $38,000 in the ISNB account." He added that, while he knew at the time that there was "a significant problem" with the trust account being out of trust, he did not know the extent of the problem.

When asked if the October 10, 2003 deposit of $140,000 in personal funds was for the purpose of being able to refund the $242,000 to Wilshire, respondent answered that Wishire was "whole" and that "[i]t might have been other clients whose trust balances it messed up."

Respondent attributed the delay in returning the Wilshire monies to the fact that he needed to take at least a day or two to figure out what was going on. He understood that the return of a sheriff's deposit was taking place, but he wanted to make sure that the return reached the trust account before a check was issued. Respondent claimed that he made sure the funds were there. He stated that, notwithstanding statements to the contrary, the client "really wasn't inconvenienced in any way, shape or form."

Respondent contended that, in order to determine the extent of the out-of-trust "situation" with the Commerce account, respondent claimed that he "went to" the firm's part-time

bookkeeper and to its outside accounting firm. However, he did not instruct either one to do anything to investigate the trust account issue. Instead, he began a search for someone to be in charge of the firm's accounting.

When Keith Herbert was hired in April 2004, he undertook the investigation. When questioned about the delay between Herbert's interview in the fall of 2003 and his start date in the spring of the following year, respondent replied that Herbert was not able to start working for the firm until April of the following year.

**COUNT FOUR - THE MERMINGIS MATTER**

Kancher testified that respondent's firm undertook the representation of Konstantine and Vasiliki Mermingis on December 31, 1999. The fee agreement provided for the payment of one-third of the clients' net recovery. Kancher was the only firm attorney who worked on the matter.

The matter settled for a total of $325,000, which was paid by several checks. Based on the firm's two settlement statements, the firm was entitled to an attorney fee of $100,478.62 plus $16,064.14 in costs, for a total of $116,542.76.

On May 8, 2000, an $85,000 settlement check, issued by The Prudential Property and Casualty Insurance Company of New Jersey and Affiliated Companies in the Mermingis matter, was deposited into the firm's trust account. On May 17, 2000, the clients received their $53,839.29 share of the proceeds. Respondent's firm received its $31,160.71 in attorney fees and costs.

On October 16, 2003, Universal Underwriters Insurance Company issued a $75,000 settlement check to respondent's firm, as attorneys for the Mermingises. Eight days later, the check was deposited into the firm's trust account. On October 30, 2003, all $75,000 was transferred to the firm's business account. Respondent's firm had already taken $31,160.71 of the $116,542.76 in attorney fees and costs to which it was entitled. Thus, after the $75,000 was transferred into the business account, the firm was entitled to receive from the next settlement check only $10,382.05 in payment of the balance of its fees and costs.

On December 29, 2003, the final Mermingis settlement check, in the amount of $150,000, was deposited into the firm's trust account. Respondent did not pay the $139,617.95 due to the Mermingises out of this sum until February 12, 2004.

Verdel testified that the Mermingis funds deposited on December 29, 2003 were not maintained inviolate until disbursed to the clients. The trust account statement dated January 31, 2004 shows that, by January 20, 2004 the balance had dropped to $24,723.23. By January 22, the balance was down to $6,168.45. On January 27, 2004, Green Tree wired $180,977 into respondent's trust account. On February 12, 2004, the date that respondent finally issued the Mermingises' check, $150,000 was deposited into the trust account, representing a payment from KFI Interior Design to the firm. KFI is the acronym for Karen Farinella Interiors. Farinella was respondent's fiancée.

Respondent recalled that the firm had received a $150,000 settlement check in the Mermingis matter in December 2003. He agreed that, on February 12, 2004, $139,617.95 was distributed to the Mermingises and that, between the firm's receipt of the funds, in December 2003, and their distribution, in February 2004, the funds should have remained intact in the trust account. He acknowledged that, on several occasions during the month of January 2004, the trust account balance was below $25,000 and that, therefore, the clients' funds "technically" were not maintained inviolate. Indeed, as a result of the checks written and funds wired, the Mermingises funds ultimately

were depleted by more than $130,000. Respondent denied, however, that he had spent the Mermingises' money.

According to respondent, the $150,000 deposited into the trust account, on February 12, 2004, represented funds received by the firm "as part of a lease arrangement to purchase furniture for the suite upstairs." Although the $150,000 was given to the firm in the form of a check from KFI, respondent testified that it should have been from Sterling Bank. He surmised that Farinella had received the funds from the bank and then turned them over to the firm. He explained the transaction:

> No, she wasn't paying for it. I borrowed moneys by virtue of a lease transaction. Since she obtained the vendors they wrote her the checks. That's what happened.
>
> . . . .
>
> Couldn't make that up. You can check it. Sterling Bank lent basically under lease $150,000.
>
> . . . .
>
> I knew that I was all messed up from a record keeping perspective and wanted to put the moneys in the trust account.
>
> [5T91-3 to 16.]

Respondent admitted to the presenter that he would be "less than candid" if he denied having put the $150,000 into the trust account to make up for the shortage in the Mermingis funds. He explained that, because the books were "a mess" during this time, his goal was simply to get his clients whatever monies they were owed.

Respondent continued his claim that "any client request for return of moneys, based upon the situation that I was in, they got immediately." According to respondent, this system did not affect other client funds. He conceded, however, that, "technically," a January 8, 2004 disbursement to Green Tree had invaded the Mermingis funds.

Kancher testified that he had never spoken to the Meningises about lending that money to the firm. To his knowledge, no one else had discussed the matter with them, as the only other person who had contact with the clients was his secretary and she would not have asked them such a question. Kancher never gave permission, on behalf of his clients, for anyone to use their money.

**ADDITIONAL INFORMATION**

Keith Herbert testified that he was hired as respondent's firm administrator in April 2004. He left the firm in January 2005. Herbert was familiar with the Juris system, which he believed was widely used in the legal industry. While employed by the firm, Herbert had occasion to make entries into the Juris ledger system.

On Herbert's first day of work at respondent's firm, there had been a meeting with the OAE, which caused his duties to change dramatically. Instead of managing the firm, he was now responsible for reconciling the trust account. To undertake this task, Herbert relied upon the Juris ledger sheets and bank statements, deposit slips, and canceled checks. He "used the ending balances that were in the account," rather than reviewing "every single entry in the trust history." He did not perform a reconciliation that was specific to any particular client matter but, rather, came up with an overall number.

Herbert was unaware of any prior reconciliation of the trust account, although he never asked if any had been done and no one had ever told him whether the account had been reconciled. He was unable to perform a proper reconciliation of the firm's trust account because he did not have complete

records. When he asked for certain documents from either Courant-Heller or respondent, he was never given a straight answer.

Herbert identified the reconciliation that he was able to perform for the firm. Herbert's reconciliation reflected that, as of February 29, 2004, the client matter balances totaled $1,496,579.55. The Commerce Bank trust account balance was $1,287,407.56 and the ISNB trust account balance was $38,379.52, leaving the firm out of trust by approximately $170,000.

Upon questioning by respondent, Herbert agreed that respondent had never told him to change any documents. In addition, respondent instructed him to cooperate with the OAE's investigation.

At the ethics hearing, some testimony demonstrated inconsistent entries in the Juris ledger. For example, Verdel testified that the $580,000 Conseco/Green Tree deposit in the Ghahary matter, in August 2002, was entered into the Juris system under two different ledgers. Specifically, the deposit was entered into the Juris system on September 24, 2002 in the Ghahary matter, but was recorded in the Conseco matter as a wire transfer on September 29, 2002, which is the correct date, according to the bank records.

A schedule prepared by the OAE identified the dates and amounts of funds that were transferred from the trust account to the business account between January 8, 2003 and January 13, 2004. During this time, approximately seventy transfers were made. With the exception of two transfers, all of them were in even-dollar amounts. Moreover, quite a number of the transfers were made when the business account was overdrawn.

**COUNT FIVE - SAMANTHA'S TRUST**

Little evidence was offered with respect to the charges arising out of respondent's handling of his daughter Samantha's trust. Respondent testified that Judge Holden had ruled in the matrimonial matter between him and his former wife, that he had misappropriated monies from Samantha's trust. The funds were in respondent's name, as his daughter's trustee. The judge's decision was affirmed on appeal.

No details were elicited at the disciplinary hearing. Although the record contains a September 7, 2004 order by Judge Holden directing respondent to pay to the trust certain monies based upon his "previous misappropriation of those funds," there is no statement of the judge's reasoning. Moreover, the record contains no opinion of Judge Holden, explaining the basis for

his determination that respondent had misappropriated Samantha's funds.

Verdel testified that, although Judge Holden had ruled that respondent misappropriated Samantha's funds in 2004, he and his former wife had reached a full and final settlement in their divorce matter, in 2001. Verdel was unfamiliar with the matter and was unaware of respondent's personal financial status in 2003 and 2004, other than his firm's bank account activity.

**THE SPECIAL MASTER'S REPORT**

In a report dated March 4, 2009, the special master recommended respondent's disbarment for the knowing misappropriation of client funds in the Read, Wilshire, Mermingis, and Conseco/Green Tree matters. With respect to Samantha's trust, the special master determined that the OAE had not established knowing misappropriation by clear and convincing evidence.

In the Read matter, the special master found that, when respondent approved the November 13, 2003 transfer of $11,000 from the firm's trust account to its business account, the trust account balance dipped below the amount that should have been held on behalf of the client. The special master acknowledged

the absence of direct evidence of knowing misappropriation on respondent's part, but found that clear and convincing circumstantial evidence established that respondent "had to know that client funds were being invaded by his actions."

In support of this finding, the special master noted that respondent knew that the trust account was out of trust in August 2003; that he had "received regular and systematic updates from his staff and bookkeeper regarding the balances in the trust account" and, therefore, "was aware of balances and how much he could transfer before the Read funds were invaded;" that he knew about the "serious problems with the accounting practices of the firm;" and that, in October 2003, he had knowingly used one client's funds to pay another client.

The special master rejected respondent's claim that the invasion of funds was the result of a lack of oversight of his staff, who had acted negligently in handling the firm's funds. Unlike other cases where attorneys were inattentive to the state of their bookkeeping, the special master found that, in this case, respondent was very attentive to the books, having asked for and received regular updates on account balances. Thus, the special master concluded, he knew the status of the trust account and "repeatedly invaded client funds after finding out

about the bookkeeping problems." Accordingly, the special master ruled, the "bad bookkeeper" defense did not apply in this instance.

In the Wilshire matter, the special master found that respondent had knowingly engaged in lapping by invading Wilshire's funds to pay Green Tree. Specifically, on September 26, 2003, $242,034 in Wilshire funds was deposited into the trust account. On October 1, 2003, $580,000 was paid to Green Tree, leaving the trust account balance at approximately $12,000. According to the special master, respondent had to know that the funds transferred to Green Tree were funds that belonged to Wilshire. Thus, he knowingly paid one client with funds of another.

In the Mermingis matter, the special master determined that the clients' funds were knowingly misappropriated on two occasions. First, $150,000 in settlement proceeds was misappropriated when respondent directed the issuance of a January 9, 2004 trust account check to Green Tree, in the amount of $164,920. The check to Green Tree was possible only because of the December 29, 2003 deposit of the settlement check. Moreover, respondent admitted to having intentionally used the Mermingises' funds to pay Green Tree. The special master quoted

respondent as follows: "I knew the account was messed up. I was trying to, for lack of a better word, squeeze the account, the juice out of the grapefruit, and to start again."

Second, respondent knowingly misappropriated funds from Green Tree and KFI, which were deposited in his trust account between January 27 and February 17, 2004, when he directed the issuance of the Mermingis settlement check on February 18, 2004. Again, the special master noted, because respondent received regular updates on the firm's account balances, he knew that he did not have enough money to pay Green Tree before the deposit of the Mermingis funds or enough money to pay Mermingis prior to the deposit of the Green Tree and KFI funds.

The special master concluded that, given the timing of the deposits and disbursements, "there can be no debate that Respondent intentionally lapped and knowingly misappropriated client funds in the Mermingis matter."

With respect to the Conseco/Green Tree matter, the special master found that respondent also knowingly misappropriated its funds. Specifically, she found that respondent knew that the trust account was out of trust and made up the deficiency by using Junto Investment deposits. The special master stated: "The timing of the deposit of the Junto funds and the withdrawal

of the Conseco funds, combined with the deposit of personal funds, establish that Respondent knew the trust account was out of trust, and that he knew he was using other client funds to make up the difference."

With regard to Samantha's trust, the special master acknowledged that the complaint had charged respondent with negligent misappropriation. However, according to the special master, the OAE's proposed findings of facts and conclusions of law suggested that respondent should be disbarred for knowingly misappropriating the trust funds. Therefore, the special master analyzed the claim as one of knowing misappropriation, but did not find respondent guilty of that offense.

According to the special master, respondent's use of the trust funds for the payment of family expenses that presumably benefited his daughter was "not a clear case of knowing misappropriation." Specifically, in the special master's view, the OAE failed to establish by clear and convincing evidence that respondent had knowingly misappropriated any monies from Samantha's trust.

Finally, in light of her findings of knowing misappropriation in four of the five counts alleged in the complaint, the special master did not make any finding or reach

any conclusions with respect to the remainder of the charges brought against respondent.

Following a de novo review of the record, we are satisfied that the special master's finding that respondent's conduct was unethical was fully supported by clear and convincing evidence. Respondent knowingly misappropriated escrow funds in the Read matter and client funds in the Wilshire, Mermingis, and Conseco/Green Tree matters. We agree with the special master that the OAE failed to proffer clear and convincing evidence that respondent had knowingly misappropriated funds from Samantha's trust.

As the special master observed, respondent stated that, in August 2003, he became aware that the Commerce Bank trust account was out of balance. Yet, between that time and February 12, 2004, he undertook no steps to ascertain the source of the problem or to rectify it. In fact, he was remarkably incurious about the situation.

Instead, respondent embarked on a course of conduct called lapping, which is commonly known as "robbing Peter to pay Paul." In other words, the attorney takes the designated funds of one client and uses them to pay for another client's needs. In re Brown, 102 N.J. 512, 515 (1986). Although respondent openly

admitted to the invasions of the funds at issue, he defended the charges on the ground that he was inattentive to his recordkeeping responsibilities and that Courant-Heller was incompetent.

In the Conseco/Green Tree matter, respondent held onto the client's $580,000 for more than a year after it should have been returned. He was not able to return the funds to Conseco/Green Tree until after he had received $672,500 from Junto Investments in mid-September 2003.

In the Read matter, respondent invaded the $6528 that was to be paid to Batterman Engineering, when he transferred $12,000 from the trust account to the business account at about the time that the Batterman Engineering check was presented for payment.

In the Wilshire matter, he invaded the client's funds so that Green Tree could be refunded the $580,000 that it had been owed for more than a year. He also transferred $35,000 to the business account. In order to return Wilshire's $242,000, respondent was then required to deposit $140,000 in personal funds into the trust account.

In the Mermingis matter, he invaded the clients' funds when, after their final settlement check in the amount of $150,000 was deposited into the trust account at the end of

2003, he used the monies to fund a January 20, 2004 $164,920 check to Green Tree. Moreover, he then invaded $180,977 in Green Tree funds, which were deposited into the trust account on January 27, 2004, in order to finally pay the Mermingises on February 12, 2004.

As stated, in all four client matters, respondent admitted to the invasion of the clients' funds. We find that his defense failed, however.

To be sure, Courant-Heller was ill-suited for the position. However, her lack of experience – indeed, even incompetence – cannot serve to absolve respondent of the obvious, namely, that he knowingly misappropriated trust account funds.

Respondent had total control over the accounts. He saw to it that only he and the office administrator had access to the account information. He was the only person who controlled the funds. His conduct with Courant-Heller, that is, directing her to transfer funds in and out of the trust account, was a well-established pattern. He had done that with Forte, prior to Courant-Heller's assumption of her duties. Forte testified that he was constantly moving money around. The OAE's schedule of transfers shows the regular movement of funds from the trust account to the business account in even dollar amounts, a fact

that points to the satisfaction of present financial needs, rather than to legitimate transfers of amounts owned to the firm.

As the special master observed, respondent claimed to have known that the trust account was out of balance in August 2003. Yet, he did nothing to rectify the situation. Instead, he continued to receive daily reports from Courant-Heller regarding the balances; he continued for months to lap the clients' funds until they were exhausted; and, when there were no client funds available, he replenished the trust account with personal funds. Despite his claim that Courant-Heller was incompetent, respondent never fired her or hired someone to try to fix the situation until after the OAE had begun the audit of his accounts, in the spring of 2004.

With respect to Samantha's trust, there was insufficient evidence to support a conclusion that respondent misappropriated trust funds, as the term "misappropriation" is defined in our ethics system. By the use of the term "misappropriate," Judge Holden simply could have meant that respondent had misused the monies due to a lack of understanding on his part as to what was a permissible expense and what was not a permissible expense. There is no basis for us to conclude whether respondent's

actions were the result of either knowing or negligent misappropriation.

For the reasons stated above, respondent must be disbarred for knowingly misappropriating escrow funds in the Read matter, and client funds in the Wilshire, Conseco/Green Tree, and Mermingis matters. In re Wilson, supra 81 N.J. 451, and In re Hollendonner, supra, 102 N.J. 21. We so recommend to the Court. Therefore, we need not consider the remaining charges against respondent.

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
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Hal J. Shaffer
Docket No. DRB 09-119

Argued: September 17, 2009

Decided: November 10, 2009

Disposition: Disbar

| ***Members*** | Disbar | Suspension | Reprimand | Dismiss | Disqualified | Did not participate |
|---|---|---|---|---|---|---|
| Pashman | X | | | | | |
| Frost | X | | | | | |
| Baugh | | | | | | X |
| Clark | X | | | | | |
| Doremus | X | | | | | |
| Stanton | X | | | | | |
| Wissinger | X | | | | | |
| Yamner | X | | | | | |
| Zmirich | X | | | | | |
| Total: | 8 | | | | | 1 |

Julianne K. DeCore
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Chief Counsel