

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-306
District Docket No. XIV-05-259E

IN THE MATTER OF
AZAMA ALIYA BILQIYS
AN ATTORNEY AT LAW

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Decision

Argued: February 15, 2007

Decided: March 30, 2007

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

Anthony J. Randazzo 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 Ethics Master Bernard A. Kuttner, based on respondent's knowing misappropriation of escrow funds

Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985). These changes stemmed from respondent's conduct in a real estate transaction.

The second count charged respondent with lack of candor toward a tribunal (RPC 3.3(a)(1)), knowingly offering evidence that she knew to be false (RPC 3.3(a)(4)), knowingly making a false statement of material fact to disciplinary authorities (RPC 8.1(a)), and conduct involving dishonesty, fraud, deceit, and misrepresentation (RPC 8.4(c)). These charges arose out of respondent's statement, in an affidavit to the Supreme Court, that she had never had an ethics complaint filed against her or been the subject of an ethics investigation.

The hearing before the special master took place on August 21, 2006. Respondent did not testify, although counsel appeared on her behalf and cross-examined the OAE's witnesses: Donnell Williams, the owner of Destiny Realty; Walter Hawkins, the buyer; Hawkins' wife (and the seller's daughter), Dolores Ensley; OAE investigator Wanda L. Riddle; and attorney Marcy E. Gendel, who represented Hawkins when he later sold the house.

We now detail the facts that led to the charges against respondent. In the Fall of 2003, Wilbur Ensley and Walter Hawkins (Ensley's son-in-law) entered into a contract for the

sale of Ensley's East Orange home to Hawkins for \$135,000. The agreement identified Destiny Realty, Inc. as the broker and designated a six percent commission. The parties also signed a document acknowledging their understanding that respondent represented both of them, that they had received full disclosure of this fact from her, and that they had agreed to the dual representation.

According to the RESPA prepared by respondent, the closing went forward, as scheduled, on November 17, 2003. Among other things, the RESPA reflected: (1) \$5,008.16 cash due from buyer, (2) \$43,562.80 cash due seller, (3) \$8100 commission to Destiny Realty, (4) \$1400 to respondent in attorney fees, (5) \$3725 in title examination fees, and (6) \$5000 to pay off a first mortgage loan.

On November 17, 2003, \$127,887.94 was deposited in respondent's trust account (which, at the time, had a zero balance), notwithstanding that the RESPA reflected a \$132,914 mortgage loan to Hawkins, with a gross amount of \$146,022.16 due from him. Ensley did not receive \$43,562.80 in closing proceeds, as stated on the RESPA, but only \$34,026. Respondent never wrote a check to Destiny Realty. Instead, she wrote an \$8100 check to Investor's ICC for "realty comm. fee."

Respondent also wrote a \$3,928.50 check to Investor's ICC for "finding fees on Hawkins," which was not listed on the RESPA. In addition, respondent did not simply take the \$1400 in attorney fees, as reflected on the RESPA. She also misappropriated more than \$5600, most of which, according to the RESPA, was to be used to pay off a mortgage, but, instead, was deposited into respondent's attorney trust account.

Donnell Williams, the owner of Destiny Realty, a residential and commercial real estate brokerage firm in Morris Plains, testified that he had been unaware of the Ensley/Hawkins transaction until the OAE contacted him to discuss this matter. Williams stated that Ensley's house was never listed with Destiny or any other realtor, and that Destiny had not located a buyer for the property. Moreover, notwithstanding the RESPA's representation that an \$8100 commission was due Destiny Realty, the company received no money for the transaction.

According to Williams, the contract signed by Ensley and Hawkins was not the standard form of contract used by Destiny, which is produced by the New Jersey Association of Realtors. He described the Ensley/Hawkins contract as a form produced by "Staples."

Williams never had a conversation with respondent about the Ensley/Hawkins transaction. Nevertheless, he believed that any attorney would have been suspicious of the Ensley/Hawkins contract because it was a "Staples" form with the real estate company name inserted in hand-written form.

Williams surmised that a former real estate agent from Destiny, Andre Cook, might have been involved in the transaction. Cook worked for Destiny from 2002 through 2005. Thus, if, at the time of the transaction, Cook told Ensley and Hawkins that he worked for Destiny, they would have had no reason to disbelieve him because Cook's representation would have been true.

Ensley's daughter, Dolores, and her husband, Walter Hawkins, testified about the transaction. Ensley did not testify.

Dolores, whose testimony was collaborated by her husband in all respects, testified that her father wanted to transfer ownership of his house to her husband as "a gift of equity." She explained that only her husband was purchasing the home from her father because he was "financially secure." Dolores had power of attorney for her father, signing all the documents on his behalf, except for the contract of sale.

According to Dolores, "we" obtained financing because Ensley "had tax liens on the house," and she and Hawkins also wanted to make repairs to the home. The financing was obtained from Investors Mutual, where their contact was Andre Cook. Cook told Dolores that he had a real estate license, but he never stated that he worked for Destiny Realty.

According to Dolores, no realtor was involved in the transfer of the property, and she had never heard of Destiny Realty until it was "typed on our closing statement." She was unaware of the identity of the person who wrote in the name of the company on the agreement of sale. Dolores did not notice Destiny's name on the contract until after it was signed and, in fact, she testified that many parts of the contract presented to her husband for signature were blank. According to Dolores, Cook stated that the blanks would be filled in (presumably later) and that "the lawyer would explain everything to us."

Dolores testified that Cook had denied her request to have an attorney of her choice at the closing. According to Dolores, Cook told her that the parties were required to use respondent.

Dolores met respondent for the first time at the closing where respondent assured Dolores and Hawkins that she would explain everything to them. Yet, respondent gave them more

blank papers for their signature. The papers were never explained, and their many questions were never answered.

The entire transaction took, at most, fifteen minutes. Upon its completion, the parties were sent home with a "stack of papers." However, Dolores testified, when she reviewed the documents at home,

[i]t seemed like I had nothing, it said nothing, there were no real contracts, it was just stuff that we signed, most of it was blank, wasn't filled out, it was nothing. It said nothing. It was just like a generic, it was all generic that we had all generic papers.

[1T45-16 to 22.]¹

Dolores stated that, when she reviewed the RESPA statement at the closing, she questioned the \$8100 commission to Destiny Realty. Respondent answered: "[D]on't worry about the numbers . . . we're just saving your house and I'll explain everything to you."

Dolores also questioned the \$5000 pay-off of the mortgage loan. Respondent told Dolores that there were liens on the house, and that because it was not known whether they were legitimate, \$5000 would be placed in escrow to cover anything

¹ "1T" refers to the transcript dated August 21, 2006.

that had to be paid. Respondent informed Dolores, however, that, if any of the liens were legitimate, then it would be Hawkins's responsibility to satisfy them.

Dolores questioned the \$43,565.80 figure as cash due the seller because her father had received a check for about \$34,000. Respondent, again, replied that she would explain it to her.

After the closing, Dolores had more questions. However, Dolores was unsuccessful in her many attempts to contact respondent between November 2003 and April 2005, as respondent ignored her many telephone messages and faxes. Ultimately, Dolores gave up her attempts to have her questions answered.

When Dolores and Hawkins tried to sell the home in April 2005, they learned that "nothing was done on the title, none of the work that we paid her to do was done." Thus, Hawkins and Dolores hired attorney Marcy Gendel to clear the title, which she did in fewer than two months. Gendel also obtained a refund of the \$5000 that was placed in respondent's escrow account. Respondent, however, refused to refund the \$3550 fee that she charged to "clear the title."

Respondent's financial records and the bank's records revealed what was done with the closing proceeds. The records

show that, between November 17, 2003 and May 31, 2005, respondent made no additional deposits into the Ensley/Hawkins trust account, beyond the original \$127,887.94 deposit. As shown below, the differences in the records pertain to the trust account activity between May 5, 2004 and May 31, 2005.

At some point not identified in the record, the OAE required respondent's personal appearance at an audit of the Ensley/Hawkins transaction. On July 8, 2005, respondent wrote to the OAE, objected to the appearance requirement, and claimed that the grievance was "unfounded, without merit and lack[ed] credibility." At the hearing, OAE investigator Wanda L. Riddle testified that respondent represented in the letter that \$5000 was set aside, as there were three open mortgages, and that the funds had remained in her escrow account until they were returned to the grievants and their attorney. Respondent enclosed with her letter copies of her trust account bank statements, which appeared to support her claim.

The copies of the bank statements that respondent produced to the OAE for the period November 1, 2003 through May 31, 2005 showed that, as of December 19, 2003, the trust account balance was \$5,791.42. It remained at that figure through May 31, 2005. Respondent's client ledger card for the Hawkins/Ensley

transaction also reflected a \$5,791.42 balance as of November 20, 2003, and continuing through to May 12, 2005, when she released the \$5300 to Gendel.

The actual records of the bank itself, however, tell a different story. Indeed, according to Riddle, respondent's client ledger card was "altered to reflect the funds were maintained when they were not," and the bank statements provided by respondent to the OAE "were false and had been altered."

According to the bank's records, respondent's trust account for the Ensley/Hawkins had a zero balance on November 17, 2003, at which time she deposited \$127,887.94. Like respondent's bank statements, the bank's records reflect a \$5,791.42 balance as of December 19, 2003. Unlike respondent's statements, however, the bank's records show that respondent maintained the \$5,791.42 balance only until May 5, 2004. In fact, between May 6 and May 27, 2004, the bank paid out \$3845 in checks drawn on the trust account, leaving a balance of \$1,946.42 on May 27, 2004. The checks are detailed below:

Check No.	Payee	Amount	Description	Client Charged
1504	Respondent	\$1,435.00	Attorney Fees	Williams
1505	Respondent	350.00	Attorney Fees	No I.D.
1508	Respondent	900.00	Attorney Fees	Hawkins
1510	Respondent	450.00	Attorney Fees	Hawkins
1513	Register Essex	710.00	Recording Fee	Irvington Prop

In June 2004, respondent wrote two checks: one to herself for \$389, with no notation as to its purpose, and another to the Superior Court of New Jersey for \$200, containing a notation of "Madison Sq. Garden vs." an illegible party's name. As of June 16, 2004, the trust account balance was \$1,357.42.

From June 16, 2004 through December 4, 2004, respondent's trust account was dormant. On December 4, 2004, respondent cashed a \$1200 trust account check with the notation "atty fee." No client matter was identified on the check. The trust account balanced dipped to \$157.42.

According to Riddle, respondent did not provide the OAE with copies of any of the checks that she wrote from May through December 2004. The OAE learned of them only after it had subpoenaed and received respondent's bank records. Thus, Riddle testified, respondent had falsified the copies of the bank statements that she produced to the OAE.

On May 13, 2005, respondent deposited \$2600 into the trust account. On May 14 and May 18, 2005, she made two additional deposits in the amounts of \$1,611.93 and \$932. As of May 18, 2005, the balance in the trust account was \$5,301.35.

On May 12, 2005, respondent wrote a \$5300 check to "Marcy Gendel Attorney Trust Acct." with the notation "Walter Hawkins,

7 William St., East Orange, NJ, escrow return \$5000, Seller [illegible] return \$300," which was not cashed until June 20, 2005. On June 6, 2005, she wrote a check to Walter Hawkins for \$491.42, with the notation "to zero trust account." The check was cashed on June 27, 2005. As of that date, the balance in respondent's trust account was zero.

Riddle also testified about certain irregularities with respect to the Ensley/Hawkins transaction itself. First, although respondent's client ledger card showed an \$8100 check for "Investors real estate comm.," which was the mortgage broker, nothing about the transaction suggested that Investors was entitled to a real estate commission. Second, the ledger card showed a \$3,928.50 check for "Investors finding fees," a disbursement that was not identified on the RESPA.

Third, when Riddle examined respondent's records pertaining to the transaction, she did not find any evidence that respondent had contacted either Dolores or Hawkins and requested permission to take the \$5000 from the escrow account as a fee. Respondent made no claim of entitlement to the funds in the reply to the grievance, her answer to the ethics complaint, or in her affidavit in opposition to the OAE's petition for temporary suspension.

In a petition dated September 9, 2005, the OAE requested respondent's temporary suspension. On September 23, 2005, respondent executed an affidavit in reply to the petition. Among other things, respondent represented that she had "never had an ethics complaint filed against me or been the subject of any investigation by the Ethics Committee in my over 22 years of practice in New Jersey." Respondent further claimed that the funds taken from the trust account were the result of an "oversight." As for the real estate commission, respondent claimed that it was contemplated in the agreement of sale, that Investor's ICC owned Destiny and that Destiny approved the payment of the commission to Investor's ICC. These representations were false.

Special Master Kuttner found that, although line 703 of the RESPA reflected an \$8100 real estate commission to Destiny Realty, the property had never been listed with Destiny, Destiny had not located a buyer for the property, and Destiny had never received a commission.

As to the \$5000 escrow, the special master noted that respondent's client ledger card for the transaction showed that \$5,791.42 had remained in her trust account after the closing and that no open mortgage was ever paid. Respondent's copies of

the bank statements also showed that she had retained the \$5,791.42 intact in the trust account until disbursement in May and June 2005. However, the account records subpoenaed from the bank showed that respondent misappropriated \$5,634, with the bulk of the funds being paid to her, and \$910 paid on other matters. After the grievance was filed, respondent replenished the trust account funds and returned the monies due Ensley and Hawkins in May and June 2005.

The special master noted respondent's representation to the OAE that the funds had remained in her trust account until they were released, and concluded that the representation was "totally false." Furthermore, he found that respondent had altered the bank statements that she provided to the OAE. So, too, respondent's affidavit to the Supreme Court misrepresented that she had never had an ethics complaint filed against her and had never been the subject of an ethics investigation. The special master concluded that respondent's representation was "knowingly false," as she had received a private reprimand in 1990 when she had a different last name, and also had been the subject of five ethics investigations.

The special master concluded that respondent violated RPC 1.15(a) when she knowingly misappropriated the \$5000 in escrow,

which were purportedly held in trust for payment of mortgages; RPC 1.15(c), by claiming to pay a real estate commission when none was due and by invading the \$5000 in escrow funds; RPC 8.4(c), by falsely claiming to have maintained the escrow funds intact and falsifying her bank records; and RPC 3.3(a)(1), RPC 3.3(a)(4), RPC 8.1(a), and RPC 8.4(c) "by knowingly making false statements as to the non misappropriation, offering bank statements which were altered, saying she had no prior disciplinary history when she had been reprimanded under a prior name in 1990 and claiming never to have been investigated when she knew that was false." Based on Wilson, supra, 81 N.J. 451, the special master recommended respondent's disbarment.

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.

With one exception, the special master correctly concluded that respondent committed all ethics violations charged in the complaint. First and foremost, she knowingly misappropriated trust funds when, without Ensley's or Hawkins' permission, she wrote \$4,724 in checks to herself and \$910 in checks on two other matters, which were drawn against the funds set aside from the Ensley/Hawkins transaction. Respondent used these funds for

matters wholly unrelated to the transaction and without the clients' permission.

It is not clear whether these funds were leftover client funds or whether they were funds required to be paid to satisfy liens. In either case, however, they were trust funds, which respondent was not authorized to use for any purpose other than that for which they were intended, that is, the satisfaction of an existing mortgage. By using the trust funds for her own benefit and without the knowledge and consent of her clients, respondent knowingly misappropriated the trust funds, in violation of either Wilson, supra, 81 N.J. 451, or Hollendonner, supra, 102 N.J. 21, RPC 1.15(a), and RPC 8.4(c). Respondent also misappropriated trust funds when she paid \$8100 to Investor's ICC for a real estate commission fee, when no realtor was involved in this intra-family transfer.

Respondent did not violate RPC 1.15(c), however, which applies only when the client and the attorney both claim an interest in trust funds. In this case, respondent neither had a claim nor made a claim to the funds.

Respondent also violated RPC 8.1(a) (knowingly making a false statement of material fact in connection with a disciplinary matter) and RPC 8.4(c) when she (1) stated in her

July 8, 2005 letter to the OAE that the \$5,791.42 remained intact in the trust account until the funds were released to Hawkins and his attorney, and (2) forged her records to support her misrepresentations to the OAE. In addition, she violated RPC 3.3(a)(1), RPC 3.3(a)(4), and RPC 8.4(c) when she stated in her affidavit to the Supreme Court, in response to the OAE's motion for her temporary suspension, that she had never had an ethics complaint filed against her and had never been the subject of an ethics investigation. In fact, respondent was privately reprimanded in 1990, albeit under a different name. Moreover, when respondent was known by her previous name, she was investigated in four other matters, all of which were dismissed without the filing of a formal ethics complaint.²

On a final note, there are several discrepancies and unanswered questions with respect to this transaction, including the payment of almost \$4000 in "finding fees" to Investor's ICC, respondent's receipt of \$3725 in title examination fees, in addition to the \$1400 in attorney fees she received, the

² Although ethics investigations are confidential in cases where a matter is dismissed before the filing of a complaint, they are mentioned in this decision because respondent waived the confidentiality when she opened the door and informed the Supreme Court that no such investigations had taken place.

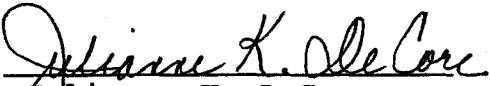
apparent \$9,536 shortfall in proceeds due Ensley at closing, and respondent's failure to clear an outstanding lien. These issues, however, are not before us because they were neither raised nor pursued at the hearing. Furthermore, in light of respondent's knowing misappropriation, they would have been irrelevant to the assessment of the proper level of discipline in this matter.

Because respondent must be disbarred, under Wilson and/or Hollendonner, for knowingly misappropriating trust funds, we need not consider what would be the appropriate discipline for the balance of her infractions.

Members Boylan and Lolla 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
William J. O'Shaughnessy
Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

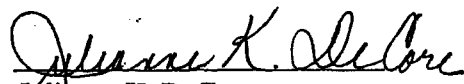
In the Matter of Azama A. Bilqiys a/k/a Yvette H. Worth
Docket No. DRB 06-306

Argued: February 15, 2007

Decided: March 30, 2007

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not participate
O'Shaughnessy	X						
Pashman	X						
Baugh	X						
Boylan							X
Frost	X						
Lolla							X
Pashman	X						
Stanton	X						
Wissinger	X						
Total:	7						2


Julianne K. DeCore
Chief Counsel