SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-117

IN THE MATTER OF	:
CARL VALORE	:
AN ATTORNEY AT LAW	:

Decision

Argued: July 20, 2000

Decided: October 9, 2000

Nitza I. Blasini appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter is before us based on a recommendation for discipline filed by special master Susan B. Davis.

The complaint alleges six counts of knowing misappropriation and one count of failure to maintain required attorney records.

Respondent was admitted to the New Jersey bar in 1960. During the relevant time, he maintained an office for the practice of law in Linwood, New Jersey. According to respondent's testimony at the ethics hearing, he retired from the practice of law prior to September 15, 1998. However, the 1999 and 2000 New Jersey Lawyers' Diaries indicate that respondent is counsel to the "Valore Chartered Law Offices."

Respondent has no disciplinary history.

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All but one of the six counts in this matter (Barresi) concern respondent's failure to maintain clients' settlement funds in his trust account pending payments to third parties for clients' medical expenses and workers' compensation, welfare or Medicaid liens. The Barresi count concerns settlement funds that were to be distributed to the heirs of an estate. Instead, respondent transferred the settlement funds from his attorney trust account to either his attorney business account (also called his "cost" account) or to his "special attorney trust" account and used the funds to pay the litigation costs of other clients' cases.

Respondent opened the special trust account in September 1994 in connection with a $1,000,000 settlement of a case against Exxon Corporation in which respondent represented approximately three hundred plaintiffs. After disbursements were made to the

Exxon plaintiffs, respondent used the account as an "investors' account."[1] According to respondent, his complex litigation practice required large amounts of working capital for litigation costs incurred on behalf of plaintiff-clients. It was respondent's practice to borrow money from clients and others, give them promissory notes with interest rates above the prime rate and deposit the funds in the special trust account. Respondent would then use those monies for funding other clients' litigation costs. According to respondent, the investors' funds were "immediately allocated to a file where costs have been expended where there is a high probability of recovery."

Respondent further stated that the retainer agreements for clients whose litigation costs were funded from the special trust account contained a clause authorizing "the advancing of funds at interest rates over prime for advanced costs" and those clients understood that they would have to pay interest on the litigation costs advanced from the special trust account.

It is undisputed that, although two associates at respondent's firm handled some of the cases involved in this matter and respondent's bookkeeper made the notations on the clients' ledger cards, respondent was solely responsible for the manner in which settlement funds were disbursed after their deposit in his attorney trust account. It is also undisputed that

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[1] Respondent testified that he closed the special trust account in November 1995, at the suggestion of Sam Gerard, an accountant he had hired when he received notice of the Office of Attorney Ethics ("OAE") audit. According to respondent, Gerard told him that, because the special trust account was an investment account, "it should be kept outside of the law practice." Respondent transferred the funds in the special trust account to a new account – the "capital asset investment trust" account.

respondent alone maintained the bookkeeping records pertaining to clients' loans to other clients.

None of respondent's clients testified at the ethics hearing. The only third-party claimant who testified was a representative of Aetna Insurance Co. in the Anzalone matter.

According to respondent, his clients agreed that he could invest their funds in order to earn a higher interest rate and, ultimately, all of the third parties were paid. The OAE did not dispute that testimony. Nor did the OAE rebut respondent's testimony that the funds were invested in his other clients' litigations.

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The Barresi Estate Matter (Count One)

Respondent represented Ralph Riordan as the general administrator and administrator ad prosequendum of the estate of Kimberly Barresi in a wrongful death action. Riordan, Barresi's uncle, was chosen as the estate administrator because Barresi's parents, Lawrence Barresi and Patricia Riordan, the heirs of the estate, were divorced. The wrongful death action was settled for $200,000, payable in two $100,000 installments.

The first $100,000 settlement check was deposited in respondent's business account on July 7, 1994; the second was deposited in his trust account on July 27, 1994.[2] On August

[2] The Chemical (later PNC) Bank statements for respondent's trust account incorrectly state "attorney business account." It is undisputed that respondent always used the account as a trust account, that the checks state "attorney trust account" and that the bank statements contain the "IOLTA" designation. PNC corrected the error in October 1995.

25, 1994, respondent transferred to his business account $25,000 of the Barresi estate funds contained in his trust account. Therefore, as of August 25, 1994, $125,000 of the estate's funds had been deposited in respondent's business account. The remaining $75,000 was transferred to a separate Barresi estate account.

On November 29, 1994, Ralph Riordan, Patricia Riordan and respondent signed a settlement statement showing that Lawrence Barresi was to receive $43,094.03, respondent was to receive $69,404.96 for attorney fees and costs, and the "net settlement to client" was $87,501.01. Lawrence Barresi had previously released his claims against the Barresi estate for $43,094.04. Also on November 29, 1994, respondent issued a special trust account check to Patricia Riordan for $2,309.06, with a memo stating "interest @ 9% on $87,501.01 for period of 8-15-94 to 11-30-94 Estate of Barresi."

On December 1, 1994, respondent signed a promissory note in which "the Valore Law Firm, acting as agent for particular clients who have all agreed in their retainer forms to authorize the advancing of funds at interest rates over prime for advanced costs," agreed to pay Patricia Riordan $80,000 plus interest of 2% over the prevailing prime interest rate on demand on thirty days' notice.

On December 2, 1994, respondent disbursed $43,094.03 to Lawrence Barresi and $7,501.01 to Patricia Riordan The checks were issued from respondent's special trust account from funds that had been transferred from the Barresi estate account.

The OAE auditor testified that respondent used the $125,000 that had been deposited

in his business account to operate his law firm. The auditor presented no details on the specific use of the funds.

The auditor further testified that, after deducting respondent's attorney's fees and costs ($69,404.96) from the Barresi estate's funds contained in his business account, there should have been at least $30,595.04 ($100,000 - $69,404.96) in the account between July 7, 1994 and August 25, 1994, and at least $55,595.04 ($125,000 - $69,404.96) in the account between August 26, 1994 and December 1, 1994. However, the account balance was below those amounts at various times during the relevant periods.

Respondent, in turn, testified that the first $100,000 check had been inadvertently deposited in his business account by a new office manager, while he was on vacation, and that he did not learn of this mistake until August 5, 1994.[3] According to respondent, he did not return the funds to the trust account or deposit them in a special Barresi estate trust account because, sometime between August 5 and 15, 1994, Ralph Riordan had told him that he "wanted the money to earn interest while we were resolving some of the issues that had to be resolved in the case."

Respondent testified that he had a written agreement with Ralph Riordan permitting him to invest the Barresi estate funds for other clients' litigation costs. However, according

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[3] The office manager did not testify at the ethics hearing. Virginia Santaniello, respondent's sister-in-law and former bookkeeper, confirmed that, in July 1994, respondent did not have a bookkeeper and that he had a new office manager. However, Santaniello did not have personal knowledge of the deposit of the Barresi estate's settlement check in the business account.

to respondent, there was a burglary of his office in January 1995, when some of his financial records were thrown in a dumpster. Respondent believed that his written agreement with Riordan was among those records.

The Fitzgerald Matter (Count Two)

Respondent represented James Fitzgerald and, after his death, his estate, in an action against Fitzgerald's insurance company, Celtic Life Insurance Co. ("Celtic Life"), and an insurance broker, Vincent Kelly, for the payment of health benefits. Although the retainer agreement is not part of the record, it is undisputed that Fitzgerald gave respondent a $7,500 retainer and agreed to pay respondent an hourly fee.

Sometime after Fitzgerald's death, Atlantic City Medical Center ("ACMC") sued the estate for the payment of medical expenses. That case was consolidated with Fitzgerald's case against Celtic Life and Kelly. ACMC then settled its case against the Fitzgerald estate. In the stipulation of settlement, the Fitzgerald estate admitted that it owed ACMC $118,694.84. ACMC agreed that it would "accept $.50 on the dollar for the outstanding principal debt" and that respondent was to be paid $35,000 in fees and costs "for prosecuting this action [against Celtic Life and Kelly] for the benefit of all concerned." The stipulation also stated that, if the Fitzgerald estate did not obtain a recovery from the Celtic Life/Kelly case, the estate would consent to the entry of a $118,694.84 judgment in favor of ACMC.

The stipulation of settlement is not dated. Respondent testified that, although the

accompanying release is dated November 29, 1994, the stipulation was actually signed some months prior to that date and before the Fitzgerald estate's eventual settlements with Celtic Life and Allstate Insurance Co. ("Allstate"), Kelly's insurer. According to respondent, the stipulation was not dated or filed with the court because the parties did not want to disclose the settlement terms to Celtic Life or Allstate, believing that such disclosure would have adversely affected respondent's negotiations with those insurance companies.

The Fitzgerald estate's case against Celtic Life and Kelly was settled for $95,000: $70,000 to be paid by Celtic Life and $25,000 by Allstate. On September 1, 1994, respondent deposited Celtic Life's $70,000 settlement check in his trust account and, on September 6, 1994, transferred those funds to his business account.

On September 14, 1994, respondent deposited Allstate's $25,000 settlement check in his trust account and, on October 24, 1994, transferred those funds to his special trust account.

On December 1, 1994, respondent issued a special trust check to ACMC for $55,000. Between December 4, 1994 and May 5, 1995, respondent issued from his business account five additional checks, totaling $9,717.47. The checks were issued to Atlantic Medical Legal Consultants[4] in payment of Fitzgerald's outstanding medical bills.

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[4] Atlantic Medical Legal Consultants was owned by respondent's wife and the wife of another attorney. A paragraph in respondent's retainer agreement stated that the client had entered into a separate agreement with Atlantic Medical "to provide a scope of investigation and medical services" and that the costs incurred by Atlantic Medical were "recoverable costs" that would be deducted from any settlement. In the event of no recovery, the Valore law firm, not the client, was responsible for Atlantic Medical's costs. The ethics complaint did not contain any charges relating

Although the actual checks show that respondent paid $64,717.47[5] toward Fitzgerald's medical bills, respondent's client ledger card for Fitzgerald indicates payments of $66,324.95, without providing a breakdown of that total.

The ledger card also shows that respondent took $34,994.61 ($29,998.19 in fees and $4,996.42 in costs) from the settlement proceeds, but does not indicate when or from which account the funds were taken. If the initial $7,500 retainer is added to the $34,994.61, then respondent received $42,494.61 in fees and costs from the Fitzgerald estate litigation, even though the Fitzgerald estate/ACMC agreement stated that respondent was to be paid $35,000 for his fees and costs. However, the ethics complaint did not charge respondent with any impropriety in connection with his fee.

The OAE auditor testified that respondent should have held the $95,000 in his trust account until the Fitzgerald estate/ACMC stipulation of settlement was signed. However, as respondent testified, the stipulation had actually been signed before the settlement with Celtic Life and Kelly, even though it was not dated or filed with the court. Indeed, the wording of the Fitzgerald estate/ACMC stipulation supports respondent's testimony.

The auditor further testified that respondent should have held the $95,000 in trust until Fitzgerald's medical bills were paid. Although the complaint alleged that respondent used

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to respondent's use of his wife's consulting firm.

[5] The ethics complaint and the OAE's brief mistakenly state that the total paid was $62,297.80 because the complaint and brief show that the last check to Atlantic Medical Legal Consultants was for $220; in fact, the check was for $2,639.67.

the settlement funds for "general business expenses" and "other litigation matters" and the OAE auditor testified that respondent used the funds to "operate his legal practice," there was no testimony as to which specific business or litigation expenses were paid from the Fitzgerald estate's funds.[6]

It is undisputed that, at the time respondent received the settlement checks, he knew that there were outstanding medical bills totaling approximately $164,500 owed by the Fitzgerald estate. There was also an August 23, 1991 letter from an associate of the Valore law firm to Atlantic Shore Pulmonary Associates, stating that the firm would "protect payment of your medical charges from the net proceeds of any recovery" from Celtic Life.

Respondent testified that he did not recall receiving any filed liens against the Fitzgerald estate, but that Mrs. Fitzgerald, the executrix of the estate, "wanted the bills paid and compromised ... stretch the money as far as possible and see that they wouldn't have any personal liability." According to respondent, he transferred the funds out of the trust account because Mrs. Fitzgerald wanted the funds to earn interest while the medical claims were being negotiated. Respondent testified that he had written authorization from Mrs. Fitzgerald to invest the funds, but that he could not find the authorization.

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[6] With respect to the source of the $55,000 paid to ACMC from the special trust account in December 1994, the auditor testified that the funds "were related to that Exxon matter." However, there was $25,000 of the Fitzgerald estate's funds in the special trust account. Based upon the special trust account bank statements, it appears that the additional $30,000 paid to ACMC was taken from the Exxon settlement funds and that respondent did not transfer $30,000 from the business account to the special trust account in order to pay ACMC. The OAE auditor did not address whether any of the funds in the special trust account belonged to respondent, but the complaint did not charge that he misappropriated funds from the Exxon settlement.

With respect to the August 1991 letter to Atlantic Shore Pulmonary Associates promising that the law firm would "protect payment" of its charges, respondent testified that "the letter of protection" did not state that the funds would be placed in escrow. Therefore, respondent argued, the funds could be invested in accordance with the client's instructions while he negotiated a compromise of the bill. According to respondent, the bill was compromised to $1,303.20 (from $3,758) and paid in January 1995.

Respondent conceded that "there was no question that [ACMC] was to get $55,000," but claimed that the remaining medical providers "were not parties to the litigation in any way. They just had claims against the estate...for unpaid bills."

According to respondent, his fee for time spent in the litigation and in other unspecified legal work for the Fitzgerald family exceeded $95,000, but he had agreed to compromise his fees and costs to one-third of the gross recovery, less his costs. Respondent testified that the initial $7,500 retainer was expended early in the litigation. With respect to the $35,000 limitation placed on his fees and costs in the Fitzgerald estate/ACMC stipulation, respondent maintained that his fee arrangement with Mrs. Fitzgerald was separate and apart from the stipulation.

The Singh Matter (Count Three)

Respondent's associate, Jeffrey Sutherland, represented Premjit Singh in a personal injury claim against Bell Atlantic. On November 8, 1994, Bell Atlantic's $95,000 settlement

check was deposited in respondent's trust account. According to the November 23, 1994 settlement statement, respondent's firm was entitled to a legal fee of $30,403.46 and expenses of $3,780.51. The settlement statement also indicated that there were medical bills totaling approximately $46,000 and that "we are escrowing funds, balance to be returned to client." The net amount to the client was $14,816.03.

On November 23, 1994, respondent issued a $34,183.97 trust check to his firm and a $14,816.03 trust check to Singh. On December 2, 1994, respondent transferred $46,000 from his trust account to his special trust account. The memo on the trust check states "Singh/transfer to escrow." Respondent's client ledger card also states "$46,000 escrowed in account to cover medical bills."

On December 3, 1994, respondent signed a promissory note in which the Valore law firm agreed to pay Singh or Raj Badesha [7] $11,000 plus ten percent interest. The note also stated as follows:

> The bearers may demand payment at any time and shall receive return of principal and accrued interest within ninety (90) days. After outstanding payments to Zurbrugg Memorial Hospital and other outstanding medical bills in the approximate amount of $35,000 are paid [sic]. Premjit Singh or Raj Badesha may authorize payment of future medical bills from the invested funds.

On December 6 and December 12, 1994, respondent transferred $29,853.15 and $10,563.04, respectively, from the special trust account to his business account. The funds transferred to respondent's business account were not used for the medical bills. Although

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[7] According to respondent, Badesha was Singh's attorney-in-fact.

respondent had transferred a total of $40,416.19 by December 12, 1994, the business account balance fell below that amount before the first payment was made toward Singh's medical bills, on December 28, 1994.

According to the OAE auditor, out of respondent's business account, respondent paid five medical bills on behalf of Singh, totaling $35,824.58. The record is not clear as to what happened to the difference between the $46,000 that had been escrowed and the $35,824.58 paid to Singh's creditors, presumably the $11,000 plus interest referenced in the promissory note. According to respondent, at least part of those funds was transferred to his capital asset investment trust account and an additional $5,625.90 was disbursed to Singh. Respondent testified that, as of the July 27, 1999 ethics hearing date, Singh was still receiving interest from the capital asset investment trust account.[8]

Respondent testified that he did not have to maintain in trust the $46,000 escrowed from Singh's settlement funds for payments to medical providers because there were no lien letters, "no claim of right that we had to acknowledge" and because he was following his client's instructions to invest the funds.

Sutherland testified that he signed the settlement statement for the Singh case and that the reference to escrowing $46,000 for medical bills was meant to ensure that Singh's medical bills were paid. According to Sutherland, Singh did not have any medical insurance

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[8] Also, the record does not contain an explanation of an additional $1,200 received from Bell Atlantic on July 11, 1995 and three additional disbursements (totaling $1,200) from those funds, all of which are shown on Singh's client ledger card.

and Singh's "objective at the time was to get the [medical] bills paid and he wanted money to go back to India."

Sutherland also testified that, once the case was settled and the settlement funds were deposited in the firm's trust account, he had no further authority over or responsibility for the funds, even though he negotiated with the medical providers to compromise their bills. There was no testimony elicited from Sutherland as to his knowledge of the promissory note or of Singh's purported instructions to respondent to invest his funds.

The Anzalone Matter (Count Four)

In 1988, Jerry Anzalone was injured in an accident at Caesar's casino, where he was employed. Respondent represented Anzalone in a third-party action against the architect and the manufacturer of the doors at Caesar's. Ultimately, the defendants settled Anzalone's claims for $459,301.83 and $20,000, respectively. Anzalone also received workers' compensation benefits from Caesar's. Respondent did not represent Anzalone in the workers' compensation case.

By letter dated August 1, 1989, Aetna Insurance Company ("Aetna"), Caesar's workers' compensation carrier, advised respondent that Aetna had a $25,922.76 lien against a possible recovery in the third-party action and asked respondent if he would "be willing to protect our subrogation interests in this matter." On August 28, 1989, Thomas Gallagher, respondent's associate, assured Aetna "that we recognize our responsibility should Mr.

Anzalone be successful in a third party action against the architect, manufacturer of the doors and the construction company." The letter also confirmed that Aetna had agreed to split the cost of the $500 expert witness fee in the third-party action and acknowledged receipt of Aetna's documentation supporting its lien amount. According to respondent, although at some point Aetna also agreed to pay fifty percent of the total litigation costs, if respondent were successful in the case against the architect and the manufacturer, Aetna later reneged on that agreement.

The record contains several additional letters from Aetna to respondent, asking for information about the third-party claim and stating that Aetna's lien was increasing due to Anzalone's continued medical treatments.

In an April 7, 1993 letter to Aetna, respondent confirmed that Aetna had given him authority to accept $20,000 from the manufacturer and that Aetna "will accept $6,000 and I may reimburse our costs of $9,000 and disburse $5,000 to Jerry Anzalone free of all liens." The letter also stated that "if we make a full recovery against the architect (estimated $150,000 to $300,000 verdict), we will not ask you to compromise your lien."

On May 12, 1993, respondent deposited in his trust account the $459,301.83 settlement check from the architect. On May 24, 1993, he transferred the funds from his trust account to his business account. Respondent's client ledger card for Anzalone indicates that the transfer was "into interest-bearing account (Covenant)[9] per client's instructions, awaiting

[9] Respondent's business account was with Covenant Bank.

[manufacturer's insurance company's] check & resolution of comp. lien."

On May 30, 1993, respondent issued a business account check to Anzalone for $251,030.81.

In a June 7, 1993 letter to Anzalone, respondent stated the following:

> My law firm will be responsible for the alleged compensation lien of $36,638.28 asserted by Aetna. As I discussed with you I compromised this lien when we settled the case with the door manufacturer and Aetna is repudiating this settlement. Since I made this settlement with Aetna, my law firm will resolve this dispute with Aetna and you need not concern yourself with this matter.

On June 16, 1993, respondent deposited the $20,000 settlement check from the manufacturer's insurance company in his trust account, which he then transferred to his business account on September 29, 1993. The trust account check transferring the funds is made payable to "Valore Law Firm" and, on the memo section, respondent wrote "Anzalone/costs." The client ledger card does not show this transfer, indicating instead that respondent is "holding pending resolution of dispute with compensation carrier."

On June 27, 1994, Aetna requested payment of its lien. When respondent did not satisfy the lien, Aetna filed a grievance against him.

In his August 12, 1994 reply to the grievance, respondent stated that Aetna had agreed to bifurcate its $36,638.28 lien claim into two $18,319.14 claims and that one of those claims had been compromised when Aetna had agreed to accept $6,000 from the settlement with the manufacturer. Respondent further stated that he had "always been prepared to pay the sum of $24,319.14" to Aetna, but that Aetna had refused to accept that amount. Respondent also

submitted a certification to the District Ethics Committee ("DEC") stating that "[t]here is placed in Trust sufficient funds to satisfy the disputed lien claim of Aetna" and that the funds would not be disbursed, pending resolution of the dispute. At that time, however, respondent was not holding any of the Anzalone settlement funds in trust.

In an August 17, 1994 letter to respondent, Aetna disputed that it had agreed to bifurcate its lien and stated that, since April 1993, Aetna personnel had made "numerous" telephone calls to respondent, who had not returned their calls. Aetna also stated that its total lien amount was $58,496.56.

On August 19, 1994, respondent transferred $26,000 from his business account to a new account at Covenant Bank, which he opened in his name as trustee for Anzalone.

In December 1994, respondent, his law firm and Anzalone filed a declaratory judgment action against Aetna, requesting the court to declare that Aetna was entitled to $24,319.14 as full satisfaction of its lien. The case was settled in January 1995 for $32,098.24. Respondent then issued two checks to Aetna: one for $24,319.14 from the Anzalone trustee account and one for $7,779.10 from the business account.

The OAE auditor testified that she did not have the business account bank statements for the period from June through December 1993, but that the later bank statements showed that the business account balances fell below the amount needed to pay Aetna's lien.

Kathy Pressley was the Aetna claims representative in charge of the Anzalone claim between September 1990 and April 1994, when she became a supervisor. She testified that

Aetna never agreed to compromise its lien. Pressley stated that she agreed with respondent's April 1993 proposal for the distribution of the $20,000 settlement from the manufacturer because Aetna would eventually be paid its full lien amount. Pressley's contemporaneous notes corroborate her testimony.

Pressley also testified that, in June 1993, respondent told her that the architect had offered $150,000 to settle the claim and asked if Aetna would compromise its lien. She replied that it would not. (By that time, respondent had already transferred the architect's $459,301.83 settlement check to his business account). In July 1993, Pressley was told by someone at Caesar's that the litigation had been settled. According to Pressley, she then called respondent's office on several occasions to discuss payment of Aetna's lien. In June 1994, Pressley's successor also called respondent. When respondent did not return the telephone calls, Aetna filed an ethics grievance against him.

Respondent admitted that he did not maintain sufficient funds in his trust or business accounts to cover Aetna's lien. He disputed, however, that he was required to do so, stating that Aetna never provided him proof that it had perfected its lien. In addition, respondent claimed, he had received several inconsistent lien amounts from various Aetna representatives and "there was never any amount that was agreed to." Respondent reiterated his position that Aetna had agreed to bifurcate its lien and that Aetna was owed only $24,319.14.

Respondent further testified that he had told Pressley, on June 3, 1993, that he would

not hold the disputed lien funds in trust and that he would pay interest to Aetna on the correct lien amount. However, there is nothing in Pressley's contemporaneous notes indicating such discussion. In fact, the notes show that Pressley told respondent that "there was no way we will waive any of our lien."

According to respondent, he had Anzalone's permission to invest the settlement monies to earn a greater interest rate than the bank rate, until Anzalone decided what he was going to do with the funds. He testified that there were promissory notes given to Mr. or Mrs. Anzalone providing that the Valore law firm would pay three points over prime, that the Anzalones had given him an additional $200,000 or $300,000 to invest and that their tax attorney was aware of all of the transactions.

Vincent Valore, respondent's son, who worked at the Valore firm, and Tracy Gray, respondent's former secretary and current employee, corroborated respondent's testimony that he had told them, in April 1993, that Aetna had agreed to bifurcate its lien.

Gray also testified that she had drafted – and signed respondent's name on – the April 7, 1993 letter to Aetna concerning the settlement with the door manufacturer; she had used respondent's explanation of his conversation with Pressley. She believed that respondent had not reviewed the April 7, 1993 letter before she sent it to Aetna.

The Strauss Matter (Count Five)

David Castellani, an associate of respondent, represented the estate of Jesse Strauss

in a claim against Sea Crest Village Nursing Home ("Sea Crest") for injuries sustained by Strauss in an accident at Sea Crest. On February 16, 1995, the $87,500 settlement check was deposited in respondent's trust account. Respondent thereafter transferred $59,000 to his business account: $16,000 on March 9, 1995; $13,000 on March 16, 1995 and $30,000 on April 26, 1995. Respondent's client ledger card for the Strauss matter indicates that the first two transfers were for "draw against fees" and the third transfer was for "investment fund/balance fees ($1,472.84)."

By letter dated April 11, 1995, the New Jersey Division of Medical Assistance and Health Services gave notice to respondent's law firm that it was asserting a Medicaid claim and filing a lien against the Strauss estate in the amount of $2,840.33.

On April 26, 1995, respondent signed a promissory note in which the Valore law firm agreed to pay Norman Strauss (apparently, the executor or administrator of the estate) $57,027.16 plus nine percent interest . The note also stated the following:

> The bearers may demand payment at any time and shall receive return of principal and accrued interest within ninety (90) days. Provided, the sum of $2,840.33 may not be disbursed pending resolution of the Department of Human Resources claim.

The June 7, 1995 settlement statement for the Strauss estate matter shows that respondent was to receive $28,513.58 for fees and $1,959.26 for costs (for a total of $30,472.84). The statement also shows two liens: the Medicaid lien for $2,840.33 and a

"Prudential/AARP lien" for $622.70.[10] After deducting respondent's fee and costs and the two liens, the Strauss estate was to receive $53,564.13. There is a notation on the settlement statement: "per client 06-16-95 do not pay liens until he tells us it is O.K." Castellani testified that he did not write the notation on the statement, even though he and his client signed the statement on June 16, 1995. There was no testimony as to whether Castellani was aware of the notation. Castellani left the Valore law firm in June 1995.

Respondent transferred the funds remaining in his trust account, $28,500, to the special trust account on June 8, 1995. On June 13, 1995, respondent issued a special trust account check to Norman Strauss for $53,564.13, with the notation "net client settlement" on its memo section. The funds for the check came from the $28,500 that respondent had transferred from the trust account on June 8, 1995, as well as a June 12, 1995 deposit of $28,527.16 from "Catalano #4 T Account"[11] [$28,527.16 is the difference between the amount that respondent transferred to his business account ($59,000) and his fee and costs ($30,472.84)]. According to the client ledger card, on July 6, 1995, respondent issued a special trust check to Strauss in the amount of $622.70, leaving $2,840.33 in the account.[12]

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[10] According to the ethics complaint, it was later determined that the Prudential/AARP lien had been satisfied in June 1994.

[11] The record does not identify the "Catalano #4 T account."

[12] From June 1995 until the special trust account was closed in November 1995, the account balance fell below $2,840.33, the amount of the Medicaid lien, on only one occasion. On July 31, 1995, the balance was $1,854.73.

The notation next to that amount states "transfer to revolving 'T' account[13], loan to Valore/Investment."

Respondent did not pay the Medicaid lien until December 1996, after the OAE had audited respondent's records. The lien was paid from the capital asset investment account that respondent opened in November 1995 for investors' funds. The funds remaining in the special trust account were transferred to the capital asset account in November 1995.

Respondent testified that, after paying the Medicaid lien, he disbursed $1,066.83 to Strauss, which represented nine percent interest on the funds he had borrowed from the Strauss estate.

The Longo Matter (Count Six)

Respondent's associate, Castellani, also represented Janet Longo in connection with a personal injury claim. On May 1, 1995, the $15,000 settlement check was deposited in respondent's trust account. On that same date, Castellani wrote to the Atlantic County Department of Social Services requesting that it compromise its $7,208 welfare lien.

The October 18, 1995 settlement statement shows that respondent was entitled to $656.61 for costs and $4,780.65 for fees. The statement also shows the $7,200 welfare lien and the $2,362.74 owed to the client.

On October 18, 1995, respondent issued a trust account check to the Tomar Simonoff

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[13] Respondent and Santaniello testified that Nancy Barrett, another bookkeeper, made that entry and that they did not know what the "revolving T" account was.

law firm[14] for $1,593.55 and one to his firm for $3,843.71. He also transferred $7,200 to his special trust account. The complaint alleges – and respondent admits – that the $7,200 was used to fund costs associated with an unrelated matter, the "breast implant litigation." Apparently, Longo's $2,362.74 remained in the trust account.

By letter dated February 12, 1996, respondent requested that the Atlantic County Department of Social Services reply to Castellani's May 1, 1995 letter about compromising its lien and stated that he would protect its lien for thirty days, then consider it waived. The letter further stated that, "in the interim, we are holding $2,362.74 in our trust account and Mrs. Longo has invested the $7,200 to gain interest."

On May 21, 1996, Longo provided a "sworn statement" to respondent indicating that, on October 15, 1995, she had authorized him "to hold $2,362.74 in trust and invest $7,200 in client notes in the breast implant litigation where the $7,200 would gain approximately 12% interest." Longo also stated that she was satisfied with the Valore law firm, that the firm was working to resolve the welfare lien and that "[o]ne of the problems is that Welfare has lost my file and is not responding in writing to Mr. Valore."

Respondent testified that, five or six months prior to the November 1998 ethics hearing, he learned that Longo had been involved in another accident and that the welfare lien had been paid from the settlement of that personal injury case. According to respondent, the $7,200 was still invested in the breast implant litigation, earning interest for Longo.

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[14] One-third of respondent's fee was owed to the Tomar Simonoff firm because the firm had referred the Longo matter to respondent .

Recordkeeping Violations (Count VII)

The OAE found the following recordkeeping violations during its audit of respondent's records: (a) respondent's attorney trust account was labeled attorney business account on the bank statements; (b) personal and trust funds were commingled; and (c) a schedule of clients' ledger accounts was not prepared and reconciled quarterly to the bank statements.

* * *

Vincent Valore, respondent's son, testified that he was the president of Atlantic Funding Corporation, a company that "factors litigation,"and that the company had a $15,000,000 line of credit. That testimony was presented to show that respondent did not have to misappropriate client or third-party funds to fund his complex plaintiffs' litigation.

Respondent's accountant testified that his law firm's gross receipts averaged $1,000,000 a year for the period 1991 through 1997. However, there was no testimony about the firm's expenses or net profits. Although respondent attempted to introduce into evidence his tax returns for those years, the request was denied for several reasons: respondent had not previously provided the tax returns to the OAE, respondent's request had been made in September 1999 and the ethics hearings had begun in July 1998.

* * *

In mitigation of his misconduct, respondent testified that he experienced severe emotional problems beginning in March 1995 and that he attempted suicide in June 1995, but that "the whole process started in 1992 where I really, really began to think about killing myself and then it just kept growing and growing and growing." Respondent stated that, after his June 1995 suicide attempt, he began treatment with two psychiatrists. Respondent testified that, although he was never hospitalized, his son remained with him for approximately three weeks, until his doctors were confident that he would not make another suicide attempt. At that time, respondent added, he decided that he would not do any more trial work and would wind down his law practice; he did not take any new clients and referred most of the work to other lawyers.

Respondent testified that he ceased practicing law sometime prior to September 1998. However, the 1999 and 2000 New Jersey Lawyers' Diaries indicate that he is counsel to the "Valore Chartered Law Offices."

According to respondent, he became the chief operating officer of Worldwide Network, Inc., a "multi-level marketing company," and the chairman of the Board of Directors of Attorney Business Network, a new company formed by him and his wife, which provides services to attorneys, including secretarial, paralegal, transcription and financial services. As of September 1998, he was also the chief executive officer of a company called Nautilus Nutritionals.

Santaniello, respondent's sister-in-law, and Robert Buccilli, respondent's cousin, who

worked as an investigator at respondent's former law firm, corroborated respondent's testimony about his emotional problems. They described him as being withdrawn and depressed.

There were no expert medical reports. Respondent's treating psychiatrists did not testify at the hearing. There was no evidence that respondent suffered any loss of competency, comprehension or will or that his problems were so severe that he could not differentiate right from wrong.

* * *

The special master found that respondent "was obligated to satisfy the liens of the medical providers, Social Services and the Workers' Compensation carriers, as they were third persons to whom Respondent owed a fiduciary duty," and that those third-parties were not paid "in a timely manner and/or were not paid out of Respondent's trust account." The special master concluded that such conduct constituted the knowing misappropriation of escrow funds. She recommended that respondent be disbarred.

* * *

Upon a de novo review of the record, we are satisfied that the special master's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence. However, we are unable to agree that respondent's conduct constituted

knowing misappropriation of escrow funds.

It is undisputed that respondent failed to maintain in escrow settlement funds that belonged to the heirs of the Barresi estate. Respondent testified, however, that he had the administrator's consent to invest the funds, pending their distribution. Similarly, respondent testified that, in the remainder of the cases, he had his clients' consents to invest the settlement funds, pending payments to third-parties. According to respondent, his clients understood that the investments were secured only by a promissory note from the "Valore Law Firm, acting as agent for particular clients." The OAE did not dispute respondent's testimony.

Although the ethics complaint charged respondent generally with "knowing misappropriation of funds in violation of RPC 1.15," at the ethics hearing, the OAE limited its focus to the misappropriation of escrow funds. We were, in any event, unable to find clear and convincing evidence that respondent knowingly misappropriated client trust funds. In such a case, the presenter must prove that an attorney took a client's funds "knowing that it is the client's money and knowing that the client has not authorized the taking." In re Noonan, 102 N.J. 157, 160 (1986). Here, respondent testified that his clients authorized the investments; his clients did not testify at the ethics hearing; and there was no evidence that his clients did not authorize the investment of the settlement funds or that they did not understand the investment.[15] In fact, one client submitted a sworn statement that she had

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[15] Respondent's "investment" scheme may have violated the conflict of interest rules. However, the complaint did not charge a violation of those rules. In addition, there was no testimony

authorized the investment.

In In re DiLieto, 142 N.J. 492, 495 (1995), the attorney was charged with knowingly misappropriating a client's funds by failing to disclose to the client that he, rather than a third party, was the borrower of the funds. Although DiLieto had previously admitted to the OAE that he had not advised his client that he was the borrower, he testified during the ethics hearing that his client was aware of that fact. The Court stated that it harbored "serious reservations respecting [DiLieto's] credibility" but that, without the client's testimony, there was no clear and convincing evidence that the client did not know that the attorney was the borrower and, therefore, no clear and convincing evidence of knowing misappropriation.[16]

Furthermore, there is no clear and convincing evidence that respondent used the funds for anything other than other clients' litigation costs. If respondent had used the funds for routine business expenses, such as employees' salaries or office rent, such use of the funds would have been in contravention of the authority given by each client and would have constituted knowing misappropriation. See In re LaVigne, 146 N.J. 560, 610 (1996) ("An attorney may only use client funds for purposes authorized by the client.") Although the OAE auditor testified that funds were used for respondent's business expenses, she did not specify whether the business expenses included clients' litigation costs, such as experts' fees

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as to whether respondent made full disclosure to his clients and conformed to the other requirements of the rules. Furthermore, at the ethics hearing, there were no statements that would have put respondent on notice that he had to defend himself against charges of conflict of interest.

[16] As set forth below, DiLieto was disbarred for knowing misappropriation of another client's funds.

or deposition expenses. Moreover, there are no checks or other documents showing that respondent used the funds for purposes other than those authorized. Finally, the auditor did not rebut respondent's testimony that the funds were used for litigation expenses. In light of the foregoing, there is no clear and convincing evidence that respondent used the funds in contravention of his clients' authorizations or otherwise misappropriated client trust funds.

The issue is whether respondent knowingly misappropriated escrow funds or merely failed to safeguard funds belonging to a third party.[17] Of course, the distinction between the knowing misappropriation of escrows funds and failure to safeguard escrow funds is critical because, in 1985, the Court decreed that an attorney who knowingly misappropriates clients' funds is subject to the same fate – disbarment – as an attorney who knowingly misappropriates a clients' funds. In re Hollendonner, 102 N.J. 21 (1985).

"An attorney cannot satisfy his or her professional responsibility with respect to escrow funds by simply relying on information from a client that is contrary to escrow documents prepared by that attorney." In re DiLieto, supra, 142 N.J. at 506. In the matter for which DiLieto was disbarred, he had obtained his client's (the seller's) consent to use a $15,000 real estate deposit that was to be held in escrow "until closing of title and deed

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[17] The ethics complaint alleges that "respondent's conduct constitutes the knowing misappropriation of funds in violation of RPC 1.15 [no specific section stated] and RPC 8.4(c)," while the heading under each count states that the conduct violated RPC 1.15(a), (b) and (c). Although the complaint does not specifically state that respondent also failed to safekeep property, the facts in the complaint and the inclusion of RPC 1.15(a), (b) and (c) in the headings of each of the counts gave respondent sufficient notice of the alleged improper conduct and of the potential finding of a violation of those rules. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

transfer," but he did not consult the buyer, who had provided the escrow funds. When the buyer was unable to obtain construction financing within the time specified in the contract, he requested that DiLieto return the deposit, to no avail. The Court rejected DiLieto's testimony that he had not knowingly misappropriated the funds because his client had told him that the buyer had agreed that the deposit was nonrefundable. The Court noted that DiLieto had drafted the escrow agreement, which did not provide for a forfeiture of the deposit, and that he had never spoken with the buyer about the use of the deposit. The Court concluded that DiLieto's "intentional and purposeful avoidance of knowledge" of what the buyer would have said satisfied the "wilful blindness" requirement for knowing misappropriation. Id. at 506.

However, DiLieto involved an escrow in the context of a real estate transaction, while the cases before us involve clients' settlement funds that are to be paid to third-parties. It has never been held that, when settlement funds owed to a third-party are disbursed to someone other than the third-party, the attorney is guilty of knowing misappropriation, provided, of course, that the attorney has the client's consent. In In re Cavuto, 160 N.J. 185 (1999), the attorney disbursed funds that should have been paid to a medical provider to himself. Long after the diversion of the funds, the client agreed that the attorney could pay the medical providers after the completion of another case that the attorney was handling for the client. The Court stated that the post facto agreement does not "tend to establish that there had been no knowing misappropriation of client's funds or that such a diversion had implicitly been

authorized or later waived by [the client]").

It was crucial in Cavuto that the client had not authorized the attorney's use of the funds at the time the funds were taken. Furthermore, Cavuto used the funds for his own purposes. Here, the evidence is that respondent had his clients' consent to invest the funds on behalf of the clients. Of course, respondent also benefitted from the investments because they enabled him to pay for the expenses of his complex litigation matters.

Besides a general allusion to In re Wilson, 81 N.J. 451 (1979) and In re Hollendonner, 102 N.J. 21 (1985), the only ethics case relied on by the OAE for the proposition that respondent's conduct constituted knowing misappropriation is In re Howard, 121 N.J. 173 (1990). However, in Howard, it was "undisputed" that the attorney had used his clients' funds "without their authorization or knowledge." Id. at 177.

Although the facts in the present matters are not wholly analogous to the facts in In re Susser, 152 N.J. 37 (1997), that case's analysis of the distinction between knowing misappropriation and failure to safeguard funds is instructive in deciding where respondent's conduct falls. In Susser, the Court affirmed its prior decisions with respect to the release of escrow funds, explaining that such release "to a party to the escrow agreement does not invariably result in disbarment when the attorney has reasonable grounds to believe that the purposes of the escrow have been completed and the circumstances do not otherwise demonstrate that the attorney has 'made a knowing misappropriation' of the funds within the meaning of [In re Wilson and In re Hollendonner]."

The Court has consistently urged caution in determining whether an attorney's conduct amounts to knowing misappropriation. In re Roth, 140 N.J. 430, 444 (1995) ("[B]ecause of the rigid inflexibility of the *Wilson* rule and our recognition of the permanency of disbarment, we have demanded clear-and-convincing evidence that the attorney misappropriated the client's funds knowingly."); In re Peterman, 134 N.J. 201, 208 (1993), quoting In re Konopka, 126 N.J. 225, 234 (1991) ("[I]f all we have is proof from the records or elsewhere that trust funds were invaded without proof that the lawyer intended it, knew it, and did it, there will be no disbarment, no matter how strong the suspicions are that flow from that proof.")

Similarly, in In re Goldstein, 116 N.J. 1 (1989), the Court declined to disbar an attorney who had taken for himself interest earned on clients' trust funds. The Court stated that the issue of misappropriation of such interest had not been previously addressed in the context of a disciplinary action.

Mindful of precedent, we find that respondent did not knowingly misappropriate escrow funds when, with the consent of his clients, he invested funds owed to third parties. However, we do find that, with the exception of the Barresi matter, there is clear and convincing evidence of other violations of RPC 1.15.

In the Barresi matter, there is no clear and convincing evidence of any unethical conduct. Respondent testified that the first $100,000 settlement check was deposited in his business account in error and that, by the time he discovered the error, the administrator of

the Barresi estate had authorized him to invest the estate's funds.

It was the OAE's position that, even if the administrator had authorized the investment, respondent was obligated to hold the settlement proceeds in trust until Lawrence Barresi released his claims against the estate on November 15, 1994 because, prior to that time, there was a dispute as to the apportionment of the funds between Lawrence and his former wife, Patricia Riordan. However, an administrator of an estate has the authority to invest the assets of an estate prior to their distribution. N.J.S.A. 3B:20-14. There is no evidence that the administrator of the Barresi estate lacked the statutory authority to invest the estate's funds. Nor is there evidence that respondent had any special relationship or independent fiduciary obligation to either Lawrence or Patricia that would have required him to seek their consent to the investment of the estate's funds. Moreover, the documentary evidence indicates that Patricia also elected to invest her funds with respondent.

In light of the fact that the evidence was that the administrator authorized the investment, there is no clear and convincing evidence of any unethical conduct in the Barresi matter, which we dismiss.

In the Fitzgerald matter, it is undisputed that all of the settlement proceeds from the Celtic Life/Kelly case (after respondent's fees and costs were deducted) were to be paid to Fitzgerald's medical providers. It is also undisputed that, pursuant to the Fitzgerald estate/ACMC stipulation of settlement, ACMC was entitled to $55,000 from the proceeds.

Respondent signed the stipulation and was aware that ACMC was to be paid from the

settlement of the Fitzgerald estate's case against Celtic Life and Kelly. Indeed, the stipulation stated that respondent was to be paid "for prosecuting this action [against Celtic Life and Kelly] for the benefit of all concerned," including ACMC. Respondent, thus, had a fiduciary obligation to immediately pay ACMC, pursuant to the stipulation, or at least to escrow the funds while he compromised the remaining medical claims. The fact that his client consented to his interim investment of the funds may place his conduct outside the definition of knowing misappropriation, but nevertheless constituted failure to safeguard funds belonging to a third party.

We also found clear and convincing evidence of failure to safeguard funds in the Singh matter. Even if respondent had his client's consent to invest the funds, respondent's promissory note was for $11,000, not the $46,000 he transferred to the special trust account. Furthermore, the promissory note specifically excepted from its terms the medical bills, "in the approximate amount of $35,000." Therefore, respondent did not even provide the limited safeguard of an unsecured promissory note for the $35,000. Finally, it was clear from the other documents, including the settlement statement, the client ledger card, and the memo on the trust check itself that the funds were to be maintained in escrow.[18]

Sutherland, the attorney who handled the Singh case for the Valore firm, testified that the funds were to be escrowed to pay for Singh's medical bills and that the payment of the

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[18] Here, as in some of the other matters, there are indications that respondent may not have had his client's consent to the investment and/or that he exceeded the limits of that consent. However, the record lacks clear and convincing evidence of such misconduct.

bills was of primary concern to Singh's because "culturally that is like a sin...if they don't pay a bill...and he was also afraid because he wasn't from this country that he would get arrested if his bills weren't paid."

In light of the foregoing, we find that respondent failed to safeguard $35,000, in violation of RPC 1.15.

With respect to the Anzalone matter, respondent was aware of Aetna's lien, had secured Aetna's consent to the settlement with the manufacturer and had even obtained an agreement from Aetna to share at least some of the litigation expenses. Furthermore, respondent's associate had assured Aetna that the firm recognized its responsibility to Aetna and respondent had also promised his client that he would be responsible for Aetna's lien. Respondent, therefore, had an obligation to maintain in escrow the funds necessary to pay Aetna's lien. Even in the absence of a perfected lien, an attorney may have a duty to escrow funds owed to a third party. See In re Zeitler, 158 N.J. 183 (1999) (attorney reprimanded because he disbursed the settlement proceeds from his client's third-party personal injury claim, without satisfying a workers' compensation lien, after having made an affirmative representation to the third-party defendant and his insurance carrier that he would pay any bills and liens from the settlement proceeds).

In Ladenheim v. Klein, 330 N.J.Super. 219 (App. Div. 2000), the Appellate Division held that an attorney's letter of protection to a medical provider created an equitable lien in favor of the provider that "attached to the [client's] settlement proceeds" and that the attorney

was liable for the provider's bill. The court noted that "[u]nless every professional necessary for the court system is confident that lawyers are trustworthy, clients and the system itself will suffer. We believe strongly that lawyers, judges and all others connected with the judicial system must constantly impress upon the public that a lawyer's word can still be trusted."

In Selective Insurance Co. v. Ronzo, 255 N.J. Super. 415 (App. Div. 1992), a workers' compensation carrier filed suit against the employee who had received the benefits, the attorney who represented the employee in a third-party liability action and Thomas Gattis, the defendant in the third-party action. The third-party action had been settled for $37,500 and the attorney had disbursed the settlement proceeds without reimbursing Selective for the benefits it had paid to the employee. The Appellate Division held that the attorney did not owe a fiduciary duty to Selective and that "an attorney who simply knows of a client's debt has no duty to pay the creditor from the proceeds of a settlement." Id. at 418. However, the Appellate Division found that the attorney had a fiduciary duty to Gattis and his insurance carrier because the attorney knew that Selective had perfected its lien against Gattis and that his carrier could have to pay the amount of the lien twice, unless it directly paid Selective from the settlement proceeds. Ibid. Although the attorney in Selective had not made a written representation to Gattis's carrier that he would pay Selective, the Appellate Division found that "[t]he inference is irresistible that defendant induced Gattis's carrier to send him the entire amount of the settlement in reliance on his assurance as an attorney that he would

satisfy the lien from the proceeds." Ibid.

There remained the issue of whether Selective could recover against the attorney for violating a duty the attorney owed to Gattis and his carrier, not to Selective. The Appellate Division entered judgment against the attorney in order to avoid a "circuity of action" by requiring Selective to pursue a claim against Gattis and requiring Gattis to bring a claim against the attorney for indemnification. Id. at 419.

Here, it is true that Aetna had given conflicting information as to the amount of its lien. But respondent had not held in escrow the $24,319.14 that, even respondent conceded, was owed to Aetna. We find, therefore, clear and convincing evidence that respondent violated RPC 1.15(a).

We also find clear and convincing evidence that respondent misrepresented to the ethics investigator that he was holding sufficient funds in trust to pay Aetna's lien. In fact, he did not escrow those funds until a week after he had certified that he was holding the funds in trust. Respondent, therefore, violated RPC 8.4(c) by his misrepresentation.

There is some indication in the record that respondent may also have misrepresented to the ethics investigator that Aetna had agreed to bifurcate its lien. According to Aetna's representative and her contemporaneous notes, Aetna never agreed to such bifurcation. However, two of respondent's employees corroborated his testimony that he believed, in April 1993, that Aetna had agreed to the bifurcation. Given the conflicting testimony, we cannot find that respondent made a misrepresentation regarding the bifurcation issue.

There is also clear and convincing evidence that respondent failed to safeguard funds in the Strauss and Longo matters. Although respondent disputed the existence of filed liens in any of these cases, there were liens in Strauss and Longo. Furthermore, respondent recognized those liens in settlements statements, letters to the lienholders and/or in his promissory notes.

With respect to the Strauss matter, respondent also argued that he was not obligated to escrow the lien amount because the letter from the Division of Medical Assistance stated that the Medicaid lien encumbered only real property; therefore, he argued, there was no lien against the settlement funds. In fact, the letter stated that the Division was filing a lien against the estate – not just against the estate's real property – pursuant to N.J.S.A. 30:4D-7.2 and that the lien was a claim on the property in the estate. With respect to real property, the letter merely explained that the estate could not dispose of real property without the consent of the State of New Jersey. Furthermore, the language of N.J.S.A. 30:4D-7.2 makes it clear that the lien was against the estate of a deceased Medicaid recipient, not merely against the real property of the estate. We, thus, found no merit to respondent's argument.

* * *

Although respondent asserted that all of the third parties were eventually paid, respondent never paid the welfare lien in the Longo matter. Respondent testified that, five

or six months prior to the November 1998 ethics hearing, he learned that the lien had been paid from the settlement of a later personal injury claim, in which he did not represent Longo. According to respondent, the funds were still invested, earning interest for Longo.

* * *

Discipline for the improper release of escrow funds alone generally warrants either an admonition or a reprimand. See In re Spizz, 140 N.J. 38 (1995) (admonition for releasing to client escrow for former attorney's fees, against court order, and misrepresenting to court and former attorney that the funds remained in escrow) and In re Flayer, 130 N.J. 21 (1992) (reprimand where attorney released escrow funds to himself, as buyer of real property, when several complaints to the builder demanding completion of repairs went unanswered).

However, such conduct may also result in more severe discipline, depending on a number of factors, including the circumstances of the release and the presence of other misconduct. See In re Susser, 152 N.J. 37 (1997) (three-year suspension for prematurely releasing escrow funds to a developer-seller of real estate, in which entity respondent had a financial interest, and misrepresenting the status of the escrow funds to the attorney for the buyer) and In re Feranda, 154 N.J. 2 (1998) (six-month suspension where the attorney prematurely released his client's (the buyer) funds to the seller, causing his client to lose his life savings, and engaged in a conflict of interest by representing buyer and seller in a real

estate matter).

Here, respondent's misconduct was not limited to one premature release of funds in escrow. He engaged in a course of conduct that placed at risk clients' funds and escrow funds owed to third parties. To say that respondent treated those funds in a cavalier manner is an understatement. The "investments" were extremely risky. The security, inconsequential as it was, was not even identified with any specificity – the promissory note simply stated that the note was from the Valore law firm, "acting as agent for particular clients." Furthermore, respondent directly benefitted from the investments because they enabled him to fund his lucrative complex litigation.

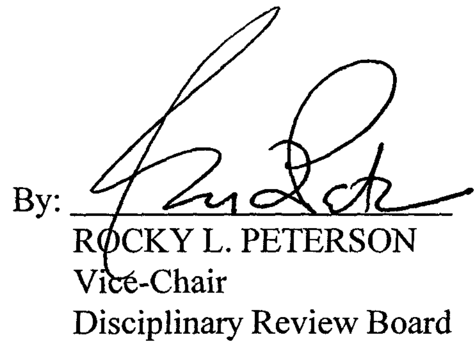
Respondent's casual attitude toward trust funds was also evident in his recordkeeping. It was frequently impossible to ascertain, from respondent's client ledger cards, to which account the trust funds had been transferred.

Finally, respondent misrepresented to the ethics investigator that he was holding sufficient funds in trust to pay Aetna's lien.

Respondent's misconduct was extremely serious. And if there had been any charge or evidence that respondent had not complied with the requirements of the conflict-of-interest rules, respondent would be facing more serious discipline. Obviously, if there had been clear and convincing evidence that respondent's clients had not authorized the investments or that respondent had not used the funds in accordance with his clients' authorizations, respondent might be facing disbarment.

We unanimously determined to suspend respondent for six months and until the conclusion of all ethics matters pending against him. Two members recused themselves.

We further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.



Dated: 10/5/2010

By: ______________________
ROCKY L. PETERSON
Vice-Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

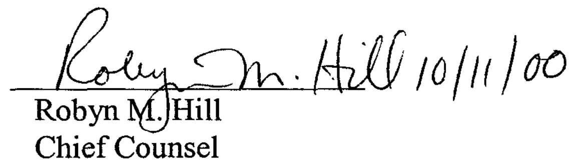
In the Matter of Carl J. Valore
Docket No. DRB 00-117

Argued: **July 20, 2000**

Decided:

Disposition: Six-month suspension

Members	Disbar	Six-month Suspension	Reprimand	Admonition	Dismiss	Recused	Did not Participate
Hymerling						X	
Peterson		X					
Boylan		X					
Brody		X					
Lolla		X					
Maudsley						X	
O'Shaughnessy		X					
Schwartz		X					
Wissinger		X					
Total:		7				2	



Robyn M. Hill
Chief Counsel