

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 15-206, 15-274,
15-307, and 15-347
District Docket Nos.
XIV-2014-0192E, XIV-2014-0241E,
XIV-2014-0256E, XIV-2013-0456E,
XIV-2014-541E, XIV-2015-0019E, and
XIV-2015-0287E

IN THE MATTERS OF
WILLIAM E. GAHWYLER, JR.
AN ATTORNEY AT LAW

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Decision

Decided: April 12, 2016

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

These matters were before us on certifications of default
filed by the Office of Attorney Ethics (OAE) pursuant to R.
1:20-4(f), which we consolidated for consideration and for the
purpose of imposing a single form of discipline.

In DRB 15-274, respondent was charged with having violated RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice), based on his failure to file an affidavit of compliance pursuant to R. 1:20-20, following his one-year suspension from the practice of law in early 2013.

Collectively, in DRB 15-206 and DRB 15-307, which involve five client matters, respondent was charged with a violation of RPC 5.5(a)(1) (unauthorized practice of law (based on his having practiced while suspended)), RPC 8.4(b) (a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d). In two of the client matters, he also was charged with having violated RPC 8.1(b); and, in one of those matters, he was charged with having violated RPC 1.5(b) (failure to communicate in writing the basis or rate of the fee) and RPC 1.16(d) (failure to refund unearned fee).

Finally, in DRB 15-347, respondent was charged with knowing misappropriation of escrow funds, a violation of RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 (1979) and In re Hollendonner, 102 N.J. 21 (1985). He also was charged with

commingling personal and escrow funds (RPC 1.15(a)); failing to safeguard funds (RPC 1.15(a)); failing to promptly deliver funds or other property of a client or third party (RPC 1.15(b)); committing a criminal act by the misapplication of escrow funds for his personal use (RPC 8.4(b)); practicing law while his license was suspended (RPC 5.5(a)(1) and RPC 8.4(b)); making false statements of material fact to the OAE and to counsel in the underlying matter regarding the status of the escrow funds (RPC 4.1(a)(1), RPC 8.1(a), and RPC 8.4(c)); and failing to file an affidavit of compliance with R. 1:20-20 (RPC 8.4(d)).

For the reasons set forth below, we recommend respondent's disbarment for the knowing misappropriation of escrow funds.

Respondent was admitted to the New Jersey bar in 1990 and to the New York and Florida bars in 1991 and 1992, respectively.

In 2011, he received a "strong censure" for a conflict of interest in a real estate transaction (representing the buyers and sellers), misrepresentations on closing documents, and failure to set forth, in writing, the basis or rate of his fee. In re Gahwyler, 208 N.J. 353 (2011).

On January 23, 2013, respondent received a one-year suspension from the practice of law, effective February 22, 2013, again for a conflict of interest in a real estate

transaction, again for dishonesty and misrepresentation in connection with closing documents, and for taking an excessive fee. In re Gahwyler, 212 N.J. 556 (2013). He remains suspended to date.

On March 27, 2014, respondent was censured, in a default matter, for recordkeeping violations and for failure to cooperate with disciplinary authorities. In re Gahwyler, 217 N.J. 218 (2014).

DRB 15-274 (XIV-2013-0456E)

This matter arises out of respondent's failure to file the required affidavit of compliance with R. 1:20-20, following his one-year suspension in 2013.

Service of process was proper in this matter. On July 21, 2014, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's last known office address, P.O. Box 332, Midland Park, New Jersey 07432, and to his home address. The certified mail receipts for each address were returned to the OAE, marked "Return to Sender - Unclaimed." The regular mail addressed to respondent's office and home addresses was not returned.

On September 4, 2014, the OAE sent a letter to respondent, at the same addresses, by certified and regular mail. The letter directed respondent to file an answer to the complaint within five days, failing which the allegations of the complaint would be deemed admitted, the complaint would be deemed amended to include a charge of RPC 8.1(b), and the record would be certified directly to us for the imposition of a sanction.

The certified mail receipts for each address were returned to the OAE, marked "Return to Sender - Unclaimed." The regular mail addressed to respondent's office and home address was not returned.

As of August 5, 2015, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified this matter to us as a default.

The single-count complaint alleged that, on January 23, 2013, the court issued an order of suspension that required respondent to comply with R. 1:20-20, by, among other things, filing with the OAE Director, within thirty days of the suspension order, "a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of this rule and the Supreme Court's order." Respondent failed to do so.

By letter dated November 25, 2013, the OAE informed attorney Andrew J. Cevalco (Cevalco), who represented respondent in another disciplinary matter, of respondent's obligation to file the affidavit. The letter requested a reply by December 9, 2013.

On April 22, 2014, Cevalco informed the OAE that he no longer represented respondent. Nevertheless, he had e-mailed the OAE's November 25, 2013 letter to respondent and, when respondent telephoned Cevalco about the matter, Cevalco advised him to "look at the Rule and take care of it."

On April 24, 2014, the OAE sent a letter to respondent, by certified and regular mail, to his then last known office address, P.O. Box 533, Midland Park, New Jersey 07432, and to his home address, informing him of his responsibility to file the affidavit pursuant to R. 1:20-20 and requesting a reply by May 8, 2014. The certified letter sent to respondent's office address was delivered on May 13, 2014. The signature of the person who had accepted delivery is illegible. The letter sent by regular mail was not returned to the OAE.

The certified letter sent to respondent's home address was returned to the OAE as "Unclaimed." The letter sent by regular mail was not returned.

Respondent neither replied to the letters nor filed the affidavit. Thus, the complaint alleged, respondent violated RPC 8.1(b) and RPC 8.4(d).

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Respondent was suspended from the practice of law, effective February 22, 2013. R. 1:20-20(b)(15) requires a suspended attorney, within thirty days of the date of the order of suspension, to file an affidavit of compliance. In the absence of an extension by the OAE Director, failure to file an affidavit of compliance pursuant to R. 1:20-20(b)(15) within the time prescribed "constitute[s] a violation of RPC 8.1(b) . . . and RPC 8.4(d)." R. 1:20-20(c). Thus, by his failure to file the affidavit, respondent violated RPC 8.1(b) and RPC 8.4(d).

DRB 15-206 (XIV-2014-0192E, XIV-2014-0241E, & XIV-2014-0256E)

These matters arise out of respondent's conduct in three real estate transactions.

Service of process was proper in this matter. On March 12, 2015, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's last known office address, P.O. Box 533, Midland Park, New Jersey 07432, and to his home address. The certified mail receipts for each address were returned to the OAE, marked "Return to Sender - Unclaimed." The regular mail addressed to respondent's office and home address was not returned.

On April 15, 2015, respondent appeared for a demand interview at the OAE, for reasons not disclosed in the certification of the record, at which time Deputy Ethics Counsel Jason D. Saunders personally handed respondent a second letter, directing him to file an answer to the complaint within five days and informing him that, if he failed to do so, the allegations of the complaint would be deemed admitted, the complaint would be deemed amended to include a charge of RPC 8.1(b), and the record would be certified directly to us for the imposition of a sanction.

As of June 3, 2015, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified this matter to us as a default.

According to the complaint, respondent admitted to the OAE that he had received a copy of the Court's January 22, 2013 order suspending him. The order required respondent to "comply with Rule 1:20-20 dealing with suspended attorneys" and provided that, "pursuant to Rule 1:20-20(c), respondent's failure to comply with the Affidavit of Compliance requirement of Rule 1:20-20(b)(15) may . . . preclude the Disciplinary Review Board from considering respondent's petition for reinstatement for a period of up to six months from the date respondent files proof of compliance." Respondent has not sought reinstatement and, therefore, he remains suspended from the practice of law.

COUNT ONE (XIV-2014-0192E)

As previously noted, on November 25, 2013, the OAE notified Cevasco, respondent's lawyer, of his client's obligation to file a R. 1:20-20 affidavit. On April 24, 2014, the OAE provided respondent directly with notice of the requirement to file the affidavit.

On April 22, 2014, Dominick Santini, Esq. (Santini) asked the OAE whether respondent's license to practice law was suspended. Six days later, the OAE sent to Santini written

confirmation of respondent's suspension. On May 1, 2014, the OAE docketed a referral from Santini.

In a written reply to the grievance, respondent admitted to having represented Carrie and Steven Ginetto (buyers), in the purchase of real property in Blairstown, New Jersey. Santini represented the sellers, Joseph and Judy Hussey.

Closing on the sale of the property was scheduled for June 16, 2014. Prior to the closing date, respondent corresponded with Santini regarding various issues. Respondent was suspended from the practice of law at the time. Moreover, as of March 4, 2015, the date of the formal ethics complaint, he still had not filed the R. 1:20-20 affidavit.

The complaint alleged that respondent violated RPC 5.5(a)(1) by representing the buyers in their purchase of the property, while he was under an order of suspension; that he violated RPC 8.4(b) because the unauthorized practice of law is a criminal offense, N.J.S.A. 2C:21-22; that he violated RPC 8.4(c) by holding himself out as a practicing attorney and, thus, engaged in conduct involving misrepresentation by failing to advise his clients, Santini, and "third parties" that he was under suspension; and finally, that he violated RPC 8.4(d) by his failure to file the R. 1:20-20 affidavit.

COUNT TWO (XIV-2014-0241E)

On May 16, 2014, the OAE docketed a grievance against respondent, filed by Karen Przenioslo, who alleged that respondent had instituted a civil suit against her mother while he was suspended from the practice of law. Respondent admitted that he had represented the plaintiff, John Zurawa (Zurawa), and that he had filed a landlord-tenant complaint on his behalf.

The formal ethics complaint alleged that respondent violated RPC 5.5(a)(1) by representing Zurawa in the landlord-tenant matter, while he was suspended; that he violated RPC 8.4(b) because the unauthorized practice of law is a criminal offense, N.J.S.A. 2C:21-22; that he violated RPC 8.4(c) because he held himself out as a practicing attorney in the course of representing Zurawa and because he failed to advise Zurawa that he was suspended; and finally, that he violated RPC 8.4(d) by his failure to file a R. 1:20-20 affidavit.

COUNT THREE (XIV-2014-0256E)

On May 15, 2014, Justin Walker, Esq., informed the OAE that respondent represented a client, Gail Komm (Komm), in a landlord-tenant matter. The complaint alleged that respondent had admitted representing Komm in that case. Specifically,

respondent discussed the landlord-tenant matter with Komm; drafted and mailed a letter on April 28, 2014, providing notice of termination of the lease to the landlord; and sent e-mails to the property manager.

The complaint alleged that respondent violated RPC 5.5(a)(1) by representing Komm in the landlord-tenant matter, while under suspension; RPC 8.4(b) because the unauthorized practice of law is a criminal offense, N.J.S.A. 2C:21-22; RPC 8.4(c) because respondent misrepresented his status as a practicing attorney to Komm and "third parties" in the landlord-tenant matter, by failing to disclose that he was under suspension; and RPC 8.4(d) by his failure to file the R. 1:20-20 affidavit.

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

RPC 5.5(a)(1) prohibits an attorney from "practic[ing] law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction." By practicing law while

suspended, respondent committed a per se violation of RPC 5.5(a)(1), in all three client matters.

Moreover, a person who "knowingly engages in the unauthorized practice of law" is guilty of a crime of the fourth degree. N.J.S.A. 2C:21-22(a). Thus, in each of the three matters underlying the allegations of the complaint, respondent's representation of the clients amounted to a crime. Accordingly, he violated RPC 8.4(b), which prohibits an attorney from committing a criminal act that "reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." See, e.g., In re Tiffany, 217 N.J. 519 (2014) (finding, among other things, that practicing while suspended is a violation of N.J.S.A. 2C:21-22(a) and, therefore, RPC 8.4(b)). Moreover, respondent's conduct in leading clients and others to believe that he was authorized to practice law violated RPC 8.4(c), which prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Finally, as previously noted, respondent's failure to file the affidavit of compliance with R. 1:20-20 is a per se violation of RPC 8.1(b) and RPC 8.4(d).

In summary, respondent violated RPC 5.5(a)(1), RPC 8.4(b), and RPC 8.4(c) in all three client matters. He also violated RPC

8.4(d) by failing to file the required affidavit of compliance with R. 1:20-20.

DRB 15-307 (XIV-2014-0541E and XIV-2015-0019E)

This disciplinary matter involves respondent's conduct in two real estate transactions.

Service of process was proper in this matter. On June 30, 2015, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's last known office address, P.O. Box 332, Midland Park, New Jersey 07432, and to his home address. The letters sent by certified mail were returned to the OAE, marked "Return to Sender - Unclaimed." The letters sent by regular mail were not returned.

On August 3, 2015, the OAE sent a letter to respondent, at the same addresses, by regular mail. The letter directed respondent to file an answer to the complaint within five days and informed him that, if he failed to do so, the allegations of the complaint would be deemed admitted, the complaint would be deemed amended to include a charge of RPC 8.1(b), and the record would be certified directly to us for the imposition of a sanction.

As of August 19, 2015, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified this matter to us as a default.

COUNT ONE

The first count of the complaint alleged that, on August 11, 2006, Fadi Samaan and Aline Samaan, also known as Aline Thomas (Thomas), purchased a residential property in Franklin Lakes. More than eight years later, on October 10, 2014, the OAE docketed a grievance against respondent, alleging that he had engaged in the unauthorized practice of law by preparing an amended deed on behalf of Thomas. On November 10, 2014, the OAE requested respondent's written reply to the grievance by November 25, 2014.

Although respondent submitted a written reply dated December 2, 2014, the OAE did not receive it until December 22, 2014. In his reply to the grievance, which included a copy of the unfiled deed prepared for Thomas, he stated: "I am available to discuss the OAE [sic] with regard to an extension of the current suspension." According to the complaint, the reply was not a "full, candid and complete disclosure of all facts reasonably within the scope of the transaction set forth in the

grievance," as it provided "little to no meaningful analysis of his representation of Thomas."

As stated previously, the OAE conducted a demand interview of respondent in April 2015. At that interview, respondent admitted that: (1) Thomas had retained him to prepare an amended deed; (2) he had prepared the deed on Thomas's behalf in September 2013, while he was under suspension; and (3) he had accepted \$1,344.50 in payment for the preparation of the deed. Respondent did not record the deed with the County Clerk's office, and he did not comply with Thomas's demand for a refund of the fee. He also failed to provide Thomas with a writing memorializing the basis or rate of his fee.

The first count of the complaint also alleged that respondent was dilatory in submitting to the OAE a written reply to the grievance, which "was evasive and lacked any meaningful explanation or analysis of the representation of Thomas." Moreover, although the OAE specifically requested that respondent produce the client's file, the retainer agreement, and copies of electronic communications with the client,

respondent failed to do so or, alternatively, provide a written explanation for his inability to produce the requested items.¹

Based on these facts, the complaint alleged that respondent violated RPC 5.5(a)(1) and RPC 8.4(b) by representing Thomas in connection with the filing of a deed during a period of suspension; that he violated RPC 8.4(c) by failing to inform Thomas that he was suspended from the practice of law; that he violated RPC 8.4(d) by failing to file the required affidavit of compliance with R. 1:20-20; that he violated RPC 1.16(d) by failing to return to his client any unearned portion of his fee; that he violated RPC 1.5(b) by failing to provide his client with a writing memorializing the basis or rate of his fee; and that he violated RPC 8.1, presumably (b), by failing to reply to the OAE's lawful requests for information.

¹ Thomas provided the OAE with copies of her text message communications with respondent. Despite the existence of the text messages, respondent failed to produce or even disclose their existence to the OAE.

COUNT TWO

The second count of the complaint alleged that, on October 10, 2014, the OAE notified respondent, in writing, that practicing law while suspended was a violation of N.J.S.A. 2C:21-22. On October 30, 2014, the OAE reminded respondent of the Supreme Court's Order and informed him that practicing while suspended may result in an additional suspension.

On January 21, 2015, the OAE docketed a grievance alleging that respondent had engaged in the unauthorized practice of law during a period of suspension. His written reply was due no later than February 20, 2015. Respondent did not comply with that deadline and did not provide the OAE with an explanation for that omission.

Respondent also failed to provide an explanation at the April 2015 demand interview. Although respondent agreed, at the demand interview, to provide the OAE with a written explanation, he failed to do so.

At an unidentified time, respondent represented Timothy and Kelly Letavish (sellers) in the sale of their Mahwah residential property. Attorney Joel Furst represented the buyers.

Respondent reviewed the contract for the sellers and prepared a "time is of the essence" letter, dated December 17,

2014, on their behalf. The letter demanded that the buyers proceed with the closing scheduled for December 29, 2014.

At the April 2015 demand interview, respondent admitted that: (1) he had represented the sellers in the sale of a residential property; (2) he had reviewed the contract; and (3) he had prepared the "time is of the essence letter." He also conceded that representing the sellers was a "stupid decision."

Despite prior notice of his suspension from the Court (by way of the suspension order), from Cevasco, and from the OAE on multiple occasions, respondent admitted that he had knowingly and willfully engaged in the practice of law by representing the sellers in the above real estate matter. Further, he was on notice that he could not represent parties to a real estate transaction by virtue of the prior grievance and set of similar facts under Docket No. XIV-2014-0192E.

Based on these facts, respondent was charged with having violated RPC 5.5(a)(1), RPC 8.1(b), RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d).

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true

and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

As with the previous matters, respondent violated RPC 5.5(a)(1) and RPC 8.4(b) when he practiced law while suspended. In addition, he violated RPC 8.4(c) by failing to inform the sellers and others involved in the real estate transaction that he was suspended from the practice of law. Moreover, he violated RPC 8.4(d) by failing to file the required affidavit of compliance with R. 1:20-20. Finally, respondent violated RPC 8.1(b) by failing to comply with the OAE's requests for information.

DRB 15-347 (XIV-2015-0287E)

The single-count complaint in this disciplinary matter charged respondent with the knowing misappropriation of escrow funds, in addition to multiple other violations.

Service of process was proper in this matter. On August 21, 2015, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's last known office address, P.O. Box 332, Midland Park, New Jersey 07432, and to his home address. The letters sent by certified mail were

returned to the OAE, marked "Return to Sender - Unclaimed." The letters sent by regular mail were not returned.

On September 15, 2015, the OAE sent a letter to respondent, at the same addresses, by regular mail. The letter directed respondent to file an answer to the complaint within five days and informed him that, if he failed to do so, the allegations of the complaint would be deemed admitted, the complaint would be deemed amended to include a charge of RPC 8.1(b), and the record would be certified directly to us for the imposition of a sanction.

As of September 29, 2015, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified this matter to us as a default.

The formal ethics complaint alleged that, on an unidentified date, respondent admitted to the OAE that he had received a copy of the Court's January 22, 2013 order suspending him for a year. The order required respondent to "comply with Rule 1:20-20." Among other things, R. 1:20-20 requires a suspended attorney to file, within thirty days of entry of the order of suspension, an affidavit specifying all of the information set forth in the rule. Respondent has not filed the affidavit, in compliance with R. 1:20-20.

Further, according to the complaint, the Court's March 27, 2014 order imposing a censure on respondent provided that he remained suspended from the practice of law and continued to be bound by R. 1:20-20.

Count one of the complaint alleged that Alla Shapiro owned and operated a commercial establishment known as Shapiro Enterprises, LLC, doing business as The Woodhouse Day Spa. On June 6, 2007, Alla Shapiro/Woodhouse Day Spa/Shapiro Enterprises, LLC (collectively, tenant) entered into a commercial lease with Herod Redevelopment I, LLC/The Pinnacle Companies, LLC (collectively, landlord). Charles Applebaum was identified as general counsel for The Pinnacle Companies, LLC. At some point during the tenancy, the tenant notified the landlord of "unsatisfactory conditions at the commercial property due to water penetration into the property" and requested corrective action. The tenant also withheld rent until appropriate remediation was undertaken or completed by the landlord.

Initially, Alan Trembulak, Esq., represented the tenant in the dispute with its landlord. The total rent withheld was \$15,293.72, which Trembulak deposited into his attorney trust account, pending resolution of the dispute.

On an unidentified date, the tenant retained respondent to represent it in the dispute. On May 12, 2014, Trembulak sent respondent a letter enclosing a \$15,293.72 attorney trust account check. The letter stated that Trembulak had been holding the funds "in escrow pending resolution of the dispute between [the tenant] and its landlord." The letter instructed: "Pursuant to prior agreement between the parties, continue to hold these funds in your Attorney Trust Account pending resolution of the issues in dispute."

The check was payable to "William Gahwyler Attorney Trust Account" and the memo line indicated "Shapiro/Woodhouse == escrow funds." Yet, respondent deposited the check into his business account.

Although respondent was suspended from the practice of law when he received Trembulak's check, he did not disclose this fact to Trembulak, Applebaum, or his client (the tenant), and he failed to correct any misapprehension on their part with respect to his attorney status.

By early 2015, the remediation of the commercial property was substantially complete, and the landlord and tenant agreed that the escrowed funds should be turned over to the landlord. Applebaum e-mailed respondent "on numerous occasions," demanding

release of the escrow monies, identification of respondent's attorney trust account, and disclosure of his office address.

In an April 15, 2015 e-mail, respondent misrepresented to Applebaum that "[t]he money is in escrow." Respondent did not have the funds in trust or in any other account at the time of this representation to Applebaum.

At an OAE interview on the following day, respondent admitted to the knowing misappropriation of the escrow funds. Moreover, he admitted that he had deposited the escrow funds in his attorney business account, that he maintained his personal funds in the attorney business account, that he had commingled escrow and personal funds, and that he had used the escrow monies for his personal purposes, including, but not limited to, the payment of credit cards, auto loans, IRS payments, and other personal expenses.

Respondent admitted to the OAE that he did not have authorization from Shapiro or Pinnacle to use the escrow funds for any purpose and that his unauthorized use of the monies was "driven by personal economic need." The OAE obtained bank records confirming respondent's use of the escrow monies for personal purposes.

During the course of the OAE interview, respondent misrepresented to the OAE that the escrow funds were maintained in a separate account at TD Bank called the "Run Coach Account" with account number xxx-xxx-2576. Further, during the OAE interview, he initially misrepresented that, prior to the demand audit, he had received and deposited \$16,000 from his brother Kevin. Later, he told the OAE that "'it's on its way' with regard to the funds to pay back the Escrow."

The complaint alleged that respondent's misrepresentations were designed to provide him time to obtain replacement funds to conceal the prior misappropriation of the escrow monies.

Based on these facts, respondent was charged with knowing misappropriation of escrow funds, a violation of RPC 1.15(a) and the principles of In re Wilson, supra, 81 N.J. 451, and In re Hollendonner, supra, 102 N.J. 21. He also was charged with violations of RPC 1.15(b), RPC 4.1(a)(1), RPC 5.5(a)(1), RPC 8.1(a), RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d).

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

The most significant charge in the complaint is the knowing misappropriation of escrow funds. The allegations of the complaint, which are deemed admitted by respondent, clearly and convincingly establish that respondent knowingly misappropriated \$15,293.72 in escrow funds.

When respondent commenced representation of the tenant, its former counsel, Trembulak, issued respondent a \$15,293.72 trust account check, which represented the rent withheld by the tenant, pending remediation of a water leak at the property. Trembulak specifically informed respondent that he had been holding these funds in escrow and that, after their transfer to respondent, the funds were to remain escrowed until the landlord-tenant dispute was resolved. Nevertheless, respondent deposited the monies into his business account and used them to pay his personal bills, without authorization from any of the parties who had an interest in the funds. Respondent's knowing misappropriation of the escrow funds was established both by respondent's bank records and by his admission to the OAE during his interview that he had used the monies for his personal benefit and that he was not authorized to do so.

Respondent also violated the other rules charged in the complaint. Specifically, he failed to promptly deliver the

escrow funds to the landlord, a violation of RPC 1.15(b). He practiced law while suspended, a violation of RPC 5.5(a) and RPC 8.4(b). In addition, respondent violated RPC 4.1(a)(1), RPC 8.1(a), and RPC 8.4(c) by failing to disclose to his client and the other parties involved in the landlord-tenant dispute that he was suspended from the practice of law, by failing to correct their misapprehension as to his ability to practice law, by misrepresenting to Applebaum that he had the escrow funds in his possession, and by misrepresenting to the OAE that he had replenished the funds that he had misappropriated. Finally, respondent violated RPC 8.4(d) by failing to comply with R. 1:20-20 after he was suspended, specifically, filing the affidavit of compliance with the Rule.


There remains for determination the appropriate measure of discipline to impose for the totality of respondent's conduct in all matters before us.

Respondent must be disbarred for knowingly misappropriating escrow funds. Wilson, supra, 81 N.J. at 455 n.1, 461; Hollendonner, supra, 102 N.J. at 26-27. Accordingly, we need not consider the appropriate quantum of discipline for respondent's other serious ethics infractions.

Member Zmirich 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
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel


**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matters of William E. Gahwyler, Jr.
Docket No. DRB 15-206, DRB 15-274, DRB 15-307 and DRB 15-347

Decided: April 12, 2016

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost	X					
Baugh	X					
Clark	X					
Gallipoli	X					
Hoberman	X					
Rivera	X					
Singer	X					
Zmirich						X
Total:	7					1


Ellen A. Brodsky
Chief Counsel