SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 15-273
District Docket Nos. XIV-2012-0669E and XIV-2014-0538E

IN THE MATTER OF

WALTER N. WILSON

AN ATTORNEY AT LAW

Decision

Decided: May 20, 2016

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

This matter was before us on a certification of the record filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). District Docket Nos. XIV-2012-0669E and XIV-2014-0538E were merged into an eight-count formal ethics complaint, which charged respondent with violations of RPC 8.1(b) and R. 1:20-3(g)(3) (failure to cooperate with disciplinary authorities) (count one); RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 (1979) (knowing misappropriation of client funds), RPC 8.4(c) (conduct involving dishonesty, fraud,

deceit or misrepresentation), RPC 1.15(a) and (b) (failure to promptly notify clients or third parties of receipt of funds in which they have an interest and to promptly disburse those funds), RPC 1.1(a) (gross neglect), and RPC 1.3 (lack of diligence) (count two); RPC 1.15(a) and the principles of In re Wilson, RPC 8.4(c), RPC 1.15(a) and (b), RPC 1.1(a), and RPC 1.3 (count three); RPC 1.15(a) and the principles of In re Wilson and In re Hollendonner, 102 N.J. 21 (1985), RPC 8.4(c), RPC 1.15(a) and (b), and RPC 1.3 (count four); RPC 1.15(a) and the principles of In re Wilson, RPC 8.4(c), RPC 1.15(a) and (b), and RPC 1.8(a) (improper business transaction with a client) (count five); RPC 1.15(a) and the principles of In re Wilson, RPC 8.4(c), and RPC 1.15(b) (failure to safeguard) (count six); RPC 1.15(a) and the principles of In re Wilson, and RPC 8.4(c) (count seven); and RPC 1.15(a) and the principles of In re Wilson, and RPC 8.4(c) (count eight).

For the reasons detailed below, we find that respondent knowingly misappropriated both client and escrow funds, and recommend his disbarment.

Respondent was admitted to the New Jersey bar in 1980. During the relevant timeframe, he maintained an office for the practice of law in Annandale, Hunterdon County, New Jersey.

Effective January 12, 2015, the Court temporarily suspended respondent from the practice of law for failure to cooperate with the OAE's investigation of the allegations under scrutiny in this matter. In re Wilson, 220 N.J. 210 (2015). Respondent remains suspended to date.

On November 24, 2015, he was admonished for gross neglect and lack of diligence in respect of a tax appeal matter. In the Matter of Walter N. Wilson, DRB 15-338 (November 24, 2015).

Service of process was proper in this matter. As set forth above, effective January 12, 2015, the Court temporarily suspended respondent from the practice of law for failure to cooperate with the OAE's investigation of the allegations under scrutiny in this matter, including charges of knowing misappropriation. On June 11, 2015, the OAE sent a copy of the complaint, by certified and regular mail, to respondent at his home address on file with the New Jersey Lawyers' Fund for Client Protection (CPF). The certified mail was returned marked "unclaimed," and the regular mail was not returned. Respondent failed to file an answer to the complaint.

On July 7, 2015, the OAE sent a "five-day" letter to respondent, by certified and regular mail, to his home address, informing him that, unless he filed a verified answer to the complaint within five days, the allegations of the complaint

would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). The certified mail was returned marked "unclaimed," and the regular mail was not returned. Respondent failed to file an answer to the complaint.

Because respondent had not filed a verified answer to the formal ethics complaint as of August 4, 2015, the OAE certified the record to us as a default on that date.

In addition to the OAE's service efforts set forth above, respondent was also expressly informed of this matter, including its default status, during our November 19, 2015 session. On that date, respondent appeared before us for oral argument in connection with DRB 15-338, for which he was subsequently admonished, as detailed above. During oral argument, respondent claimed no knowledge of this matter and, thus, was informed of the general details, on the record, by Chair Frost. Respondent stated, at that time, that he had been experiencing "trouble" with delivery of certified mailings to his home address, but conceded that he had received regular mailings in respect of disciplinary proceedings against him, including from the OAE, the Office of Board Counsel (OBC), and [the Court], regarding his temporary suspension. Respondent made multiple requests that

this matter be adjourned until our next session, acknowledging that he had recently received, by mail, a "considerable submission" from the OAE, in October 2015, but was "still weeding through [it]." In our discretion, we determined to grant respondent's request that this matter be adjourned until January 2016.

Accordingly, on November 23, 2015, the OBC sent a letter, by certified mail, regular mail, and e-mail, to respondent, summarizing his appearance before us, and extending his deadline to submit a motion to vacate the default in this matter, to December 14, 2015. The certified and regular mailings were sent to respondent's home address, which he had confirmed, on the record, during oral argument. The e-mail was sent to the address respondent had provided to the OBC on his oral argument form in respect of DRB 15-338, which he had also confirmed on the record during oral argument.

A certified mail receipt was returned, showing a delivery date of November 27, 2015, and bearing respondent's signature. The regular mail was not returned. The e-mail presumably was delivered, as no error message was returned to the OBC. Finally, additional notice of the default status of this matter, scheduled for our January 28, 2016 session, was published in the New Jersey Law Journal on December 28, 2015. Despite the actual

and constructive notice given to respondent regarding this matter, he neither filed a motion to vacate the default, nor submitted any response to the OBC's letter.

ALLEGATIONS OF THE COMPLAINT

Count One – Failure to Cooperate

As part of the OAE's investigation of an ethics grievance filed by Joseph Zurawski, discussed below, respondent was summoned to appear for a demand audit, at the offices of the OAE, on May 23, 2013. Prior to the audit, the OAE directed respondent to produce certain client files and financial records, for both his attorney trust and business accounts, including three-way reconciliations of his trust account from January 2011 through May 2013. At respondent's request, the demand audit was postponed to June 20, 2013, and once again, to July 10, 2013.

On July 10, 2013, respondent appeared at the OAE offices for the demand audit, but, claiming that he had been experiencing serious computer problems, failed to produce the required financial records for his attorney trust and business accounts, which he stated he kept electronically, using Quick Books software. Respondent promised to work with his computer

consultant over the weekend to produce the required financial records, likely the following week.

At the demand audit, respondent also stated that he handled all of his own deposits, disbursements, accounting, and recordkeeping for his sole attorney trust account, with Peapack-Gladstone Bank, and his multiple attorney business accounts. He indicated that he used an accountant exclusively for payroll accounting and tax filings. Respondent confirmed that he was the sole authorized signatory for his attorney trust account and that no signature stamp was ever used to issue checks from that account. Respondent stated that he routinely maintained all client files and bank records for seven years, and again asserted that his banking records were kept almost exclusively in electronic form, using Quick Books software. Additionally, he maintained that he prepared monthly reconciliations of his attorney accounts and that all of the financial records he would provide to the OAE for the demand audit had been routinely maintained, as required, rather than having been prepared after the OAE had demanded them.

Respondent admitted that, in the past, though "probably not for [ten] years," he had deposited client funds in a money-market account, rather than his attorney trust account, to accrue interest. Respondent denied having borrowed trust monies,

or any money, from a client, or having lent money to a client. He admitted that he had engaged in a business transaction with a current client, a solar developer.[1]

During the ten-month period between July 10, 2013 and May 15, 2014, respondent corresponded with the OAE, claimed he was gathering and would be sending the required information, and was granted multiple postponements of the demand audit. Still, he did not produce the required client files and financial records.

At the May 15, 2014 demand audit session, respondent conceded that he could produce only "some" of the items requested in the OAE's March 21, 2014 letter. Respondent admitted that the required three-way reconciliations of his trust account still were not complete, but claimed he was finally going to hire a professional, as soon as the next day, to prepare them.

On May 23 and July 1, 2014, the OAE sent additional letters to respondent, again directing him to produce specific financial records and explanations required to complete the audit, on or before dates certain. The OAE cautioned respondent that, if he failed to produce the required records, he would be subject to a charge of willful violation of RPC 8.1(b) and the OAE would file

[1] Respondent's investment in this client's solar development project, using client trust funds, is further detailed in our discussion of count three, below.

a motion with the Court, pursuant to R. 1:20-3(g)(4), seeking his immediate temporary suspension for failure to cooperate. Respondent failed to produce the required records.

On August 6 and August 7, 2014, the OAE sent letters to respondent, directing him to appear at the OAE offices for a continuation of the demand audit on August 14, 2014. The OAE's correspondence required respondent to produce specific records and explanations regarding the Versfelt/Zurawaski transaction (discussed at length in count two, below), as well as a three-way reconciliation of his attorney trust account from January 1, 2007 through August 2014. The first letter again cautioned respondent that, if he failed to produce the required records, he would be subject to a charge of willful violation of RPC 8.1(b) and a motion would be filed with the Court, pursuant to R. 1:20-3(g)(4), seeking his immediate temporary suspension for failure to cooperate. Respondent failed to appear at the demand audit and failed to produce the required records.

On September 23, 2014, in response to the OAE's motion for respondent's temporary suspension, the Court issued an order providing that respondent would be temporarily suspended if he failed to comply, within sixty days, with all outstanding OAE demand audit requests, including production of three-way reconciliations of his attorney trust account.

On September 25 and November 10, 2014, the OAE sent letters to respondent, directing him to appear for the continuation of the demand audit, on dates certain. Both times, respondent failed to appear.

On December 2, 2014, the OAE sent another letter to respondent, directing him to appear for the continuation of the demand audit, on December 15, 2014. This time, respondent appeared for the demand audit, but again failed to produce all of the financial records required to complete the demand audit. When asked about the status of the three-way reconciliations of his attorney trust account, respondent replied "[t]hey will be finished . . . You will have all of them."

On December 18, 2014, the OAE sent another letter to respondent, directing him to produce specific records and explanations regarding certain client matters discussed during the December 15, 2014 demand audit interview. This letter again cautioned respondent that, if he failed to produce the required records and explanations on or before December 31, 2014, he would be subject to a charge of willful violation of RPC 8.1(b) and a motion would be filed with the Court, pursuant to R. 1:20-

3(g)(4), seeking his immediate temporary suspension for failure to cooperate.[2]

Respondent failed to produce the required financial records and explanations that had been demanded by the OAE over the course of their investigation of respondent. Accordingly, effective January 12, 2015, the Court temporarily suspended respondent from the practice of law for his failure to cooperate with the OAE. In light of respondent's lack of cooperation, the OAE itself subsequently reconstructed his client ledger cards from January 1, 2009 through December of 2014, using information and records obtained from (i) subpoenas of respondent's banking records, (ii) prior and existing clients, and (iii) attorneys and third parties who had been involved in transactions with respondent and his clients.

Count Two — The Zurawski Matter

In April 2011, respondent represented Steven Versfelt in the purchase of real estate, located in Whitehouse Station, Hunterdon County, from seller Joseph Zurawski, an out-of-state resident. The purchase price for the property was $350,000. Zurawski agreed to hold a purchase-money mortgage on the

[2] The Court's September 23, 2014 Order provided that respondent would be suspended on the OAE's certification of respondent's non-compliance. Thus, a motion was not required.

property from Versfelt, who had been a tenant at the property up until consummation of the sale.

As settlement agent for the transaction, respondent prepared the HUD-1 settlement sheet for the April 6, 2011 closing. Additionally, respondent was responsible for the prompt disbursement of all funds, in accordance with the HUD-1, including the payment of Zuwarski's estimated non-resident New Jersey income tax obligation of $7,000. Respondent withheld these funds from Zurawski's sale proceeds.[3] After the closing occurred, however, respondent failed to satisfy Zurawski's income tax obligation to the State, despite holding $7,000 in escrow in his trust account for this purpose. He also failed to record the deed, although Versfelt had paid $250 for estimated recording fees.

In April 2012, when Zurawski filed his 2011 non-resident income tax return, he learned that respondent had not paid his non-resident income tax obligation from the $7,000 escrow and, thus, he owed those income taxes, plus a penalty and interest. If the income tax obligation had been promptly satisfied from the escrow funds, Zurawski would have received a $6,383 refund, as the mortgagee of the property, under the New Jersey tax code.

[3] The New Jersey State Non-Resident Sales Tax is an estimated gross income tax calculated for capital gain on the sale of property in New Jersey.

Instead, Zurawski hired an accountant, filed an amended 2011 tax return, and paid, out-of-pocket, the income tax due, plus a penalty and interest.

Due to respondent's failure to record the deed, Zurawski continued to receive the property tax bills, over the course of eighteen months. It was not until August 2012 that Zurawski learned that respondent had never recorded the deed to transfer the property to Versfelt.

In a November 7, 2012 reply to Zurawski's grievance, respondent claimed that the delay in the recording of the deed arose "from the loss of the original recordable instruments either in the mail or in the County Clerk's Office, having been posted to the mail from my office on April 7, 2011, with all required checks and fees." According to respondent, he first became aware that the deed had not been recorded in the spring of 2012, after being contacted by Zurawski's attorney. Respondent asserted that he was able to finally record the deed, on September 19, 2012, after receiving a clear plastic bag, from the United States Postal Service, containing the original documents and a note of apology.

Respondent also claimed that, on April 7, 2011, he had promptly issued and mailed to the Hunterdon County Clerk, as part of the "lost" recording package, a check for $7,000,

payable to the State of NJ — Division of Taxation, to satisfy Zurawski's income tax obligation, as reflected on the HUD-1.[4]

In 2014, respondent provided the OAE with his Versfelt/Zurawski client ledger card, which itemized the deposits into and disbursements from his attorney trust account in connection with the real estate transaction. The ledger card begins with a deposit of $21,615.70, made on April 6, 2011, representing the funds that respondent received from the buyer and seller at closing. On April 6, 2011, respondent made four disbursements, totaling $10,503.70, against the Versfelt/Zurawski trust account funds: $1,202.50, payable to himself; $4,179.55, payable to the Township of Readington Tax Collector, for "Versfelt p/f — thru 1st Q Taxes"; $1,625, payable to Zurawski's attorney; and $3,496.65, payable to Zurawski, for "Versfelt p/f — Proceeds." All four checks cleared, leaving a balance of $11,112 on behalf of Versfelt/Zurawski in respondent's trust account.

Despite respondent's representation in his reply to the grievance, the client ledger card contains no entry for a $7,000 check issued to the State Division of Taxation on April 7, 2009. The client ledger card, however, contains entries for four

[4] The complaint does not address whether the $7,000 should have been sent directly to the State Division of Taxation, rather than to the county clerk.

voided checks, all issued on April 6, 2011. Respondent claimed that one of those checks was the $7,000 check that the post office had returned. Additionally, during the July 10, 2013 demand audit interview, respondent asserted that, based on his reconciliation of his trust account, he was aware that at least one check he had issued for this transaction had not cleared, specifically the $4,179.55 check payable to the Township of Readington Tax Collector.

Respondent disbursed the remaining $11,112 of the Versfelt/Zurawski trust funds in September and October 2012, about seventeen to eighteen months after the closing. He issued the following checks, exhausting the funds: $1,757, payable to Oxford Title Services, Inc.; $7,000 to the State Division of Taxation; $250, to the Hunterdon County Clerk; and $2,105 to the Hunterdon County Clerk, for "RTF – Versfelt."

Between April 6, 2011, the date respondent deposited the Versfelt/Zurawski funds in his trust account, and October 2012, the date he finally disbursed those funds, he should have maintained at least $11,112 intact in his trust account, especially because he knew that $7,000, the bulk of those funds, were earmarked for payment of Zurawski's non-resident income tax obligation. However, on eight days, between July 2 and July 10, 2012, respondent's attorney trust account balance fell below

$11,112, due to disbursements made from his trust account to clients or third parties unrelated to the Versfelt/Zurawski matter. On July 10, 2012, respondent's trust account balance decreased to $1,037.38, which was $10,074.62 less than was required to be held, inviolate, on behalf of Versfelt/Zurawski alone.

During the July 10, 2013 demand audit interview, respondent repeatedly stated that he "100 percent agree[d]" with the OAE's position that the entire $11,112.00 should have remained, inviolate, as client and/or third party trust funds. Zurawski never consented to respondent's use of his funds and did not know that respondent had disbursed them for purposes and parties unrelated to his transaction. The complaint, thus, alleged that respondent knowingly invaded the Versfelt/Zurawski funds by failing to maintain the required $11,112 intact in his trust account.

Count Three – The Waxmonsky Matter

In May 2012, Michigan residents Theresa and Martha Waxmonsky (mother and daughter) retained respondent to probate the will of their family member, Gale Ecenbarger, who had died on May 8, 2012. Respondent, whose deceased wife was Ecenbarger's niece, had drafted Ecenbarger's will and represented him when he

sold his New Jersey residence, in 2006, and moved to Michigan, where he had resided until his death. The Waxmonskys directed respondent to take the necessary steps to have them appointed as co-administratrices of Ecenbarger's estate in Michigan, as provided for in the will.

During the eighteen months after he was retained, respondent and the Waxmonskys had three meetings and a few telephone conversations. According to the Waxmonskys, other than these discussions, respondent performed no work on Ecenbarger's estate. Theresa made numerous telephone calls to respondent that were not returned. Accordingly, in January 2014, the Waxmonskys retained another New Jersey attorney, John D. Pogorelec, to determine the status of Ecenbarger's estate and to complete the probate work.

On January 6, 2014, Pogorelec sent a certified letter to respondent, notifying him that he had been retained by the Waxmonskys to probate Ecenbarger's estate, requesting that respondent forward his Ecenbarger file, and providing the Waxmonskys' written authorization for the transfer of the matter, in its entirety, to Pogorelec. Respondent made no reply and took no action with regard to Pogorelec's letter. In turn, Pogorelec sent two certified letters to respondent, dated January 15 and February 18, 2014, again requesting the entire

Ecenbarger file and informing respondent that, since he had not promptly transferred the case, Pogorelec had advised the Waxmonskys to file an ethics grievance against him, which they did on March 26, 2014. Pogorelec then hired Michigan probate attorney, Amber Atkins, to assist in having the Waxmonskys named as co-administratrices in that jurisdiction.

Despite respondent's failure to probate Ecenbarger's estate, he made numerous deposits and disbursements in connection with Ecenbarger's trust funds. On October 10, 2012, respondent deposited in his trust account a $106,559.72 check from Sunset Manor, Inc., the assisted-living facility where Ecenbarger had resided until his death. The check had been issued to Gale Ecenbarger c/o Anne Carey, who was Ecenbarger's daughter-in-law. At respondent's direction, Theresa had endorsed the check, as an administratix of the estate, and sent it to respondent.

On May 23, 2013, respondent deposited in his trust account eight checks payable to Ecenbarger, totaling $31,656.72, which included investment dividend payments. These checks were endorsed by "Gale R. Ecenbarger," despite the fact that they were issued several months after his death. Theresa neither endorsed these checks nor authorized respondent to do so. In

total, respondent deposited $138,216.44 into his attorney trust account on behalf of the Ecenbarger estate.

According to respondent's Ecenbarger client ledger card, between October 18, 2012 and January 9, 2013, respondent made seven disbursements to himself, totaling $30,000, against the Ecenbarger trust funds. The client ledger card was inaccurate, however, as respondent had issued and cashed four of these trust account checks, totaling $14,500, before depositing any Ecenbarger funds into his trust account. According to the complaint, respondent prepared the client ledger card to make it appear that these disbursements post-dated the deposit. Therefore, the complaint alleged, when respondent cashed those first four checks, he knowingly invaded $14,500 of other clients' and/or third parties' funds held in his trust account.

Specifically, on September 11, 2012, respondent cashed the first of those four trust account checks, in the amount of $5,000, purportedly drawn from Ecenbarger's funds. At that time, he should have been holding $280,330.82 in his trust account for thirty-four clients and/or third parties.[5] Yet, the balance of his trust account was only $223,562.73 on that date, representing a shortage of $56,768.09.

[5] The complaint listed the names of each of these clients and/or third parties and the amounts of their respective funds.

On October 2, 2012, when respondent cashed a $2,000 trust account check, purportedly drawn from Ecenbarger's funds, he should have been holding $254,113.41, in his trust account for thirty-three clients and/or third parties. The balance of his trust account, however, was only $202,345.32 on that date, representing a shortage of $51,768.09.

On October 8, 2012, when respondent cashed the third and fourth trust account checks, in the amount of $2,500 and $5,000, respectively, purportedly drawn from Ecenbarger's funds, he should have been holding $358,006.96, in his trust account for thirty-three clients and/or third parties. The balance of his trust account was only $304,238.87 on that date, representing a shortage of $53,768.09.

During the December 15, 2014 OAE demand audit, respondent acknowledged that "[t]here were several checks that were payable to me pretty quickly . . . after the deposit [of the Ecenbarger estate trust funds]." He claimed that these checks were payment for legal fees for work he had done approximately five years prior to Ecenbarger's death, after he had moved to Michigan, despite the fact that respondent was not admitted to practice law in Michigan. Respondent represented that he would send the OAE "narrative type description bills and agreed upon amounts"

in support of his assertion. He, however, did not produce these bills.

Respondent claimed that Ecenbarger had agreed that all outstanding legal fees owed to respondent would be paid from Ecenbarger's estate. He further claimed that, before taking the $30,000 from the estate, he had informed the Waxmonskys of his agreement with Ecenbarger. He conceded that he had no documents to support either his agreement with Ecenbarger or his notice of it to the Waxmonskys.

In January 2013, respondent issued and cashed two more trust account checks, in the amounts of $5,000 and $3,000, respectively, drawn from the Ecenbarger trust funds. During the December 15, 2014 demand audit interview, respondent claimed these checks were for fees he earned for services provided to the estate, specifically for preparing "federal tax return workups" and "doing all of the Michigan probate."

On May 22, 2013, respondent obtained a $40,000 cashier's check from the Ecenbarger trust funds, payable to Thomas Horvath, a principal of a client's solar energy business enterprise. Respondent claimed that the funds were invested in the client's "no risk whatsoever [solar project] to earn [the estate] some interest," and that Theresa had verbally approved the investment, calling it "a good idea." Respondent failed to

produce any documentation to support this assertion. According to respondent, after he told Theresa he had actually made the $40,000 investment, she expressed reluctance and, thus, approximately nine days later, he returned the $40,000 to his trust account, via a personal check.

Theresa refuted respondent's assertions. Specifically, she denied that (1) respondent had told her that he was owed legal fees for work done before Ecenbarger's death; (2) respondent had provided any bills to substantiate any legal fees that he took, but, rather, he had told her and her mother, at the beginning of the representation, not to worry about legal fees and that they would be addressed when the estate work was complete; (3) she had authorized respondent to take any money from the estate for legal fees; (4) respondent had probated the will in Michigan or prepared the federal tax return; rather, the Waxmonskys had hired other professionals to complete these tasks; and (5) she and respondent had discussed using estate money for a solar investment opportunity, that she had approved such an investment or the use of estate funds for any purpose, or that she had known that respondent had disbursed $40,000 in estate funds for such a purpose.

Atkins, the Waxmonskys' Michigan estate attorney, refuted respondent's assertion that she and respondent had discussed his

disbursement of legal fees from estate funds. Atkins told the OAE that all of her communications with respondent were in writing, by e-mail or letter. She denied that she and respondent had discussed legal fees that he was owed or that he had taken from estate funds. She further denied any discussions with respondent about investments he had made in behalf of the estate.

On July 5, 2013, respondent issued a $3,000 check drawn from Ecenbarger trust funds, payable to "Jacqueline Klapp," for "Misc. Services." During the December 15, 2014 OAE demand audit, respondent claimed that this check was for either transcription or secretarial services that Klapp had performed for the estate. He promised to review his records and provide the OAE with a more detailed explanation.

Klapp denied that she had done any work for the Ecenbarger estate. When told of Klapp's denial, respondent replied "that wouldn't surprise me . . . I don't know [why I paid her $3,000 from the Ecenbarger trust funds] and will obviously have to check." Respondent never replaced the Ecenbarger trust funds that he paid to Klapp.

On July 17, 2013, respondent issued a $31,168.68 check from the Ecenbarger trust funds, payable to "Borough of High Bridge Tax Collector" for "Redemption-Cert." After this check was

negotiated, the balance of the Ecenbarger trust funds was reduced to $74,048.76. At the December 15, 2014 OAE audit, respondent could offer no explanation for this check, stating "I have no clue . . . [That disbursement had nothing] to do with the estate of Ecenbarger. It is the redemption of a tax sale certificate which is in no way, shape, or form related to Ecenbarger."

Rather, respondent explained, this check related to a transaction completed on April 23, 2014, whereby an individual, Barbara Hunt, had deeded a residential property to Clinton Development Partners, LLC (CDP), a company owned by respondent. According to respondent, the funds were used to redeem a tax sale certificate on the property. Pursuant to this transaction between Hunt and CDP, CDP took clear title to the property, in order to hold it as an investment for Hunt's creditors, who were also investors in CDP.

On October 25, 2013, respondent deposited $10,000 of his personal funds into his attorney trust account, applying it to the Ecenbarger trust funds, thereby increasing the balance to $84,047.76. On June 27, 2014, respondent deposited a $22,695.27 check from the Estate of Marion F. McLeod, payable to Hunterdon County SPCA, into his attorney trust account, and also applied it to the Ecenbarger trust funds, increasing the balance to

$106,743.13. During a demand audit interview, respondent admitted that this deposit was not related to the Ecenbarger matter, but was intended for another client. Respondent failed to rectify the inaccurate deposit in his trust account and corresponding records.

On August 27, 2014, respondent sent a letter to Atkins, enclosing a $106,743.03 attorney trust account check and a $41,373.41 cashier's check, for a total of $148,116.44, both payable to "the Estate of Gale Ecenbarger."

When Atkins received these checks, she promptly e-mailed respondent, requesting an accounting of the estate's funds, because he had sent $9,900 more than the $138,216.44 she had expected to receive on behalf of the estate. Respondent neither replied to Atkins' e-mail nor provided her with an accounting of the estate's funds.

During the December 15, 2014 OAE audit, respondent explained that, in the spring of 2014, he decided to refund to the estate his $30,000 legal fee because he did "not want to have conflict with Theresa and Martha [Waxmonsky]." Respondent stated he had sent Atkins an extra $10,000, representing interest that he claimed the estate funds had earned. Respondent, however, failed to provide the OAE with an accounting or any further details about this purported interest.

Count Four – The Gouraige/Marinaro Matter

In May 2009, respondent represented Timothy Gouraige and Christina Marinaro in the purchase of real estate, located in the Borough of Westwood, Bergen County, from William Isleib. Attorney David L. Wecht represented Isleib in the transaction. As settlement agent, respondent prepared the HUD-1 settlement sheet for the May 15, 2009 closing. Additionally, he was required to escrow $10,000 of Isleib's sale proceeds, in his trust account, to guarantee certain payments and duties owed to respondent's clients, pursuant to a post-closing use and occupancy agreement between the parties. That agreement, dated May 14, 2009, allowed Isleib to remain in the property for four days after the closing, and required him to remove certain items of his personal property from the premises.

By letters to Wecht dated May 29 and June 9, 2009, respectively, respondent alleged that Isleib breached the use and occupancy agreement by failing to remove all of his personal property when he vacated the premises. Respondent asked Wecht to authorize a division of the $10,000 escrow – disbursement of $5,000 to the buyers and $5,000 to Isleib. On June 9, 2009, Wecht informed respondent, in writing, that he could not authorize respondent to release any escrow funds until he spoke with Isleib.

Respondent and Wecht traded correspondence regarding Isleib's escrow funds on October 8, 2009, May 11, 2010 and May 17, 2010. Because respondent maintained that Isleib had breached the use and occupancy agreement, he refused to release the escrow funds to Isleib. Wecht confirmed to the OAE that he had not authorized respondent to disburse any portion of the escrow funds to himself or his client.

Isleib maintained that he had vacated the premises on the agreed deadline and had not violated the use and occupancy agreement; respondent countered that Isleib had not removed all of his personal property, forcing his clients to incur expenses to cure his breach. Respondent told Gouraige that Isleib had forfeited the entire $10,000 in escrow funds by failing to remove all of his personal property from the premises.

Gouraige informed the OAE that he tried to contact respondent to discuss the issue with Isleib, but respondent never returned his calls. According to Gouraige, although Isleib initially failed to remove some personal property from the house, including a satellite dish, he eventually satisfied all of his obligations under the use and occupancy agreement. Accordingly, in October 2009, Gouraige expressly informed respondent, by both e-mail and telephone, that he wanted the escrow funds released to Isleib.

During these final communications, both respondent and his paralegal assured Gouraige that the escrow funds would be released to Isleib. Despite respondent's promises to Gouraige, the escrow funds were not released to Isleib. Gouraige neither received any portion of the $10,000, nor authorized respondent to take any of the escrow funds for himself.

According to respondent's client ledger card for the Gouraige/Marinaro representation, respondent held Isleib's $10,000 in his trust account from May 15, 2009 through November 12, 2011, before disbursing $9,500 of the funds to himself. Specifically, on November 12 and December 16, 2011, respondent cashed two trust account checks, in the amounts of $7,500 and $2,000, respectively, payable to himself, each with the memo "Gouraige." Isleib, Wecht, and Gouraige did not authorize respondent to take these escrow funds and, to the contrary, both Wecht and Gouraige had expressly instructed respondent to release those funds to Isleib.

Count Five — The Prostack Matter

In 2002, respondent represented John and Sophie Prostack in the sale of a family farmstead. The sale proceeds of $729,795.28 were intended to fund the Prostack Family Trust, which respondent had formed for his clients, and, thus, were deposited

into respondent's attorney trust account when the transaction closed. As trustee, respondent paid $323,000 to the Prostacks and to their daughter, Patricia Springwell, the trust's three beneficiaries. John and Sophie Prostack died in 2004 and 2007, respectively, leaving Springwell as the sole trust beneficiary.

In addition to those proper disbursements, between 2003 and 2011, respondent made numerous transfers, in excess of $720,000, from the Prostack Family Trust funds to multiple, unrelated sub-accounts in his attorney trust account, as reflected on his client ledger cards. Neither the beneficiaries of the Prostack Family Trust, nor any individuals authorized to act on their behalf, had consented to respondent's use of their trust funds in other clients' behalf.

Respondent transferred the Prostack trust funds to at least nine different clients' trust sub-accounts, all with the notation "Loan." After each loan transfer was made, the loan funds immediately would be disbursed for those clients to various payees, including respondent, thereby invading the funds that respondent was required to hold, inviolate, in behalf of the Prostack Family Trust.

Respondent reimbursed some, but not all, of the funds that were loaned to other clients from the Prostack Family Trust. The OAE investigation of these unauthorized loans focused on

transfers of Prostack trust funds to the Morgan client trust sub-account in respondent's attorney trust account. Between May 26, 2004 and August 21, 2007, respondent made six transfers of Prostack trust funds, totaling $224,500, to the Morgan sub-account, as reflected on his client ledger cards. None of these funds were reimbursed to the Prostack Family Trust sub-account.

Of the $224,500 transferred from the Prostack sub-account to the Morgan sub-account, respondent disbursed $31,750 to himself. Specifically, on December 7, 2004, he transferred $15,000 and, on the same day, issued and cashed a $10,000 trust check. Next, on January 3, 2005, he transferred $10,000 and, on the same day, issued and cashed a $12,500 trust check. Finally, on March 2, 2006, he transferred $10,000 and, on the same day, issued and cashed a $9,250 trust check.

Respondent failed to produce any of the records or information that the OAE had requested regarding the Prostack trust funds and these loan transfers. By May 15, 2015, the Prostack trust funds had been depleted from the original corpus of $729,795.28 to only $6,000, with only $323,000 paid to actual beneficiaries of the trust, an invasion of $400,795.28. Patricia Springwell, the surviving beneficiary, told the OAE that she had not given respondent consent to invest the Prostack Family Trust funds.

Count Six — The Mazzei and Friese Matters

In September 2005, respondent represented a client he identified in his trust account records as "Mazzei, Belvidere Ave" (Mazzei). As of July 2, 2006, respondent was holding $105,000 in his attorney trust account in Mazzei's behalf. On July 3, 2006, he issued a $57,175.76 trust check, payable to Ocwen Loan Service, from the Mazzei trust funds, leaving a balance of $47,824.24 for that trust sub-account.

On August 22, 2006, respondent transferred exactly $57,175.76 from another client's (Friese's) trust sub-account to the Mazzei trust sub-account, returning the Mazzei balance to $105,000. That same day, he issued a $105,000 trust check, payable to the Estate of Wesley, from the Mazzei trust funds, thus fully depleting that sub-account. During the May 15, 2014 demand audit interview, respondent admitted that Mazzei and Friese had no relationship with one another.

Respondent's transfer of $57,175.76 from the Friese sub-account to the Mazzei sub-account reduced the balance of the Friese sub-account to $134,595.47. On March 5, 2007, respondent issued a $191,771.23 trust check, to Andrea Dobin, Trustee (Dobin), creating a shortage of $57,175.76 in the Friese sub-account. The complaint alleged that, when respondent issued the trust check to Dobin, he knowingly invaded other clients' and/or

third parties' funds he was required to hold, inviolate, in his attorney trust account.

Despite numerous demands, respondent failed to provide the OAE with information and records relating to these trust account transactions. According to the complaint, respondent knew he had invaded other clients' funds by issuing the Dobin trust check because, on February 3, 2010, approximately three years later, he deposited personal funds of exactly $57,175.76 into his attorney trust account.

Count Seven – The Wire Transfers

As previously noted, due to respondent's failure to cooperate with the OAE's investigation, the OAE reconstructed his trust account records for January 1, 2009 through July 31, 2014. During this reconstruction, the OAE reviewed respondent's subpoenaed trust account bank records and discovered two transactions that he had not documented in his client ledger cards.

First, on November 16, 2012, respondent wired $25,000 from his trust account to Marino, Mayers & Jarrach (Marino), with the reference "Harold Wilbert/Daub's Nursery" (Daub's). Based on a client ledger card that respondent produced, the OAE determined that, although Daub's was an active client, respondent failed to

record this wire on Daub's client ledger card or to attribute the transaction to any other client. The OAE further determined that the wire transaction represented Daub's purchase of landscaping products. According to the OAE's reconstructed trust account records and respondent's own Daub's client ledger card, respondent was not holding sufficient funds in his trust sub-account for Daub's when this wire was sent.[6]

Second, on May 21, 2013, respondent wired $28,475 from his trust account to PNC Bank, with the reference "3one4events." He did not document this wire on any client ledger card. The OAE's reconstructed trust account records could not attribute the wire to any client matter.

The complaint charged that, because respondent was holding no funds, or insufficient funds, in his attorney trust account, he knowingly invaded other clients' and/or third parties' trust funds when he wired $25,000 to Marino and $28,475 to PNC Bank, on November 16, 2012 and May 21, 2013, respectively.

Count Eight — Trust Account Shortages

The OAE's investigation of respondent's trust account records established that, on multiple occasions, the trust

[6] Although the complaint alleged that, at the time the $25,000 wire was sent, there were no funds in Daub's sub-account, Exhibit 93 reflects that the balance was $4,370.55, obviously well short of the $25,000 amount respondent wired.

account balance was below the amount that respondent was required to maintain on behalf of his clients and/or third parties.

On June 30, 2012, respondent should have been holding $239,559.16 in his trust account, in behalf of thirty clients and/or third parties.[7] Because the trust account balance on that date was only $120,316.07, the trust account was short by $138,943.09. On this same date, respondent's ledger card for his client, Resnick, reflected a negative trust sub-account balance of $10,200. Additionally, on this date, respondent's trust sub-account balance for clients Gouraige/Marinaro should have been $10,000, representing Isleib's escrow funds, but was only $500, as respondent had improperly disbursed $9,500 to himself, as detailed under count four, above.

[7] This total, as set forth by the OAE, includes a line item listing $6,000 that respondent should have been maintaining on behalf of the Prostack Family Trust. As set forth above, however, this $6,000 represents the severely depleted balance of the Trust, after respondent had knowingly invaded at least $224,500 of its funds. The total, thus, that respondent should have been maintaining on this date, is much more than $239,559.16. The same mistake was made with respect to other client trust sub-accounts that respondent had knowingly invaded, including the Versfelt and Gouraige trust funds, as detailed in previous counts. Although these errors do not negate the substance of the allegations of this count, respondent is improperly given "credit" for monies he had misappropriated from his trust account.

Similarly, on September 30, 2012, respondent should have been holding $139,897.90 in his trust account in behalf of thirty-one clients and/or third parties.[8] On that date, however, the trust account balance was only $53,429.81, creating a shortage of $86,468.09, even after respondent had deposited personal funds into his trust account. On this same date, respondent's client ledger cards for Resnick and the Ecenbarger estate reflected negative trust sub-account balances of $20,000 and $5,000, respectively. Again, on this date, respondent's trust sub-account balance for clients Gouraige/Marinaro should have been $10,000, but was only $500.

Respondent claimed that the shortfall in his trust account was due to a 2004 bank error, made by Peapack-Gladstone Bank, which had mistakenly credited a $120,000 deposit to the Friese trust sub-account as only $12,000. He stated that, as of 2004, he believed that the error had been corrected and that the full deposit had been credited to his trust account, but conceded that he had no confirming documents.

In July 2012, Peapack-Gladstone Bank alerted respondent that his attorney trust account contained insufficient funds to

[8] This total accounts for the monies respondent misappropriated from the Gouraige/Marinaro trust sub-account, but does not account for other monies respondent misappropriated, including the significant sum from the Prostack Family Trust.

honor checks that had been presented. Although he claimed that this was the first time he realized that the alleged 2004 bank error had never been corrected, he failed to produce either the Friese client file or any documentation from the bank to support his claim that a bank error had caused his trust account shortfall.

In response to the July 2012 alert from the bank, respondent made a series of six deposits, totaling $110,000, into his trust account, attributing these deposits to the Friese trust sub-account. Three of the deposits, totaling $67,500, were made from respondent's personal funds. Respondent claimed that he credited these deposits to the Friese sub-account because "[he] didn't know where to put them."

On September 30, 2013, respondent should have been holding $328,340.42 in his trust account in behalf of forty-six clients and/or third parties. On that date, however, the trust account balance was only $194,983.49, for a shortage of $133,359.93. On this same date, respondent's ledger cards for clients Resnick and Greig reflected negative trust sub-account balances of $1,661.06 and $157.29, respectively. Again, on this date, respondent's trust sub-account balance for clients Gouraige/Marinaro should have been $10,000, but was only $500. Finally, on this date, respondent's trust sub-account balance

for the Ecenbarger estate should have been $138,216.44, but was only $74,039.24, due to improper disbursements to himself, to the Borough of High Bridge tax collector (on behalf of his company), and to Jacqueline Klapp.

* * *

The facts recited in the complaint support most of the charges of unethical conduct by clear and convincing evidence. Respondent's failure to file a verified 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). Notwithstanding, each charge in an ethics complaint must be supported by sufficient facts for us to determine that unethical conduct occurred. The most serious allegations in the instant matter are that respondent knowingly misappropriated funds that should have been held, inviolate, in his attorney trust account.

In Wilson, the Court described knowing misappropriation of client trust funds as follows:

> Unless the context indicates otherwise, "misappropriation" as used in this opinion means any unauthorized use by the lawyer of clients' funds entrusted to him, including not only stealing, but also unauthorized temporary use for the lawyer's own purpose,

> whether or not he derives any personal gain or benefit therefrom.
>
> [In re Wilson, supra, 81 N.J. 455 n.1].

Six years later, the Court elaborated:

> The misappropriation that will trigger automatic disbarment that is "almost invariable" . . . consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking. It makes no difference whether the money was used for a good purpose or a bad purpose, for the benefit of the lawyer or for the benefit of others, or whether the lawyer intended to return the money when he took it, or whether in fact he ultimately did reimburse the client; nor does it matter that the pressures on the lawyer to take the money were great or minimal. The essence of Wilson is that the relative moral quality of the act, measured by these many circumstances that may surround both it and the attorney's state of mind is irrelevant: it is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment . . . . The presence of "good character and fitness," the absence of "dishonesty, venality or immorality" — all are irrelevant.
>
> [In re Noonan, 102 N.J. 157, 159-60 (1986)].

Thus, to establish knowing misappropriation, there must be clear and convincing evidence that the attorney used trust funds, knowing that they belonged to the client and knowing that the client had not authorized him or her to do so. This same principle also applies to other funds that the attorney is to

hold inviolate, such as escrow funds. In re Hollendonner, 102 N.J. 21 (1985).

In Hollendonner, the Court extended the Wilson disbarment rule to cases involving the knowing misappropriation of escrow funds. The Court noted the "obvious parallel" between client funds and escrow funds, holding that "[s]o akin is the one to the other that henceforth an attorney found to have knowingly misused escrow funds will confront the [Wilson] disbarment rule . . . " In re Hollendonner, supra, 102 N.J. at 28-29.

As detailed below, respondent's knowing misappropriation of trust and escrow funds was established, by clear and convincing evidence, in counts two through eight of the complaint.

Count One

The facts set forth in count one clearly and convincingly establish that respondent violated both RPC 8.1(b) and R. 1:20-3(g)(3).

During its investigation of Zurawski's grievance, the OAE summoned respondent to appear for a demand audit, on May 23, 2013, and to produce certain client files and financial records, including three-way reconciliations of his trust account, from January 2011 through May 2013.

At respondent's request, the demand audit was postponed six times, causing the OAE's efforts to engage respondent in the audit and corollary investigation to span from May 2013 through January 2015, when he finally was temporarily suspended by the Court, based on his failure to cooperate with the demand audit and OAE investigation. During that time frame, the OAE sent respondent at least twenty letters detailing the financial records, reconciliations, and explanations that respondent was required to produce. Moreover, without notice or explanation, respondent failed to appear for scheduled demand audit sessions on three separate occasions.

Respondent's persistent lack of cooperation and sustained efforts to stall the OAE investigation were calculated and egregious. When respondent did meet with the OAE, he attempted to delay the audit and investigation by making misrepresentations and hollow promises. For example, on July 10, 2013, respondent claimed that all of his banking records were kept electronically, and that he had recently been experiencing serious computer problems. He promised to work with his computer consultant over the coming weekend to produce the required financial records. He never did so.

Likewise, respondent claimed that he had prepared monthly reconciliations of his bank accounts and that he had routinely

maintained all of the financial records that he was required to provide to the OAE for the demand audit. This representation too proved to be untrue. On October 31, 2013, after the OAE traveled to respondent's office, he once again failed to produce the required financial records, including three-way reconciliations of his attorney trust account. Four months later, on February 25, 2014, respondent sent a letter to the OAE, contradicting his earlier representation and claiming that he was still completing the three-way reconciliations of his attorney trust account and would "be providing the records of same . . . as soon as practical."

On May 15, 2014, after the OAE had once again traveled to respondent's office, he failed to produce the required three-way reconciliations and asserted that he was planning to hire a professional, as soon as the next day, to prepare them. Finally, on December 15, 2014, at the OAE offices, respondent appeared for the demand audit without the three-way reconciliations, promising that "[t]hey will be finished . . . You will have all of them." It is clear from the record that respondent had not been maintaining three-way reconciliations of his attorney trust account and had lied to the OAE during demand audit interviews about their status. Respondent never produced

them, despite the OAE's demand, his promises that he would complete them, and the Court's order that he do so.

Effective January 12, 2015, the Court temporarily suspended respondent from the practice of law for failing to cooperate with the OAE. Due to respondent's lack of cooperation, the OAE was compelled to reconstruct his records from information obtained from other sources.

Through his sustained and purposeful lack of cooperation, which included contradictions, misrepresentations, and the failure to produce required records, culminating in his temporary suspension by the Court, respondent violated both RPC 8.1(b) and R. 1:20-3(g)(3).

Count Two – The Zurawski Matter

The facts set forth in count two clearly and convincingly establish that respondent knowingly misappropriated Zurawski's escrow funds. After the April 6, 2011 Zurawski to Versfelt closing, respondent was responsible for certain post-closing obligations, including the prompt payment of Zurawski's New Jersey income tax obligation from the $7,000 in escrow funds he had withheld from Zurawski's sale proceeds. After the closing occurred, however, respondent not only failed to record the deed for the transaction, but he failed to satisfy Zurawski's income

tax obligation to the State, despite the $7,000 he held in escrow for this purpose.

Consequently, when Zurawski filed his 2011 non-resident tax return, in April 2012, he learned that his income tax obligation had never been paid, and that he owed income tax, plus a penalty and interest. At the time he filed, Zurawski had been expecting a $6,383 refund.

As a consequence, Zurawski was forced to hire an accountant, file an amended 2011 tax return, and pay not only the income tax due, out-of-pocket, but also the ensuing penalty and interest. Moreover, it was not until August 2012 that Zurawski learned that respondent had not recorded the deed to transfer the property to Versfelt.

Respondent blamed the delay in the recording of the deed on the U.S. Postal Service, which he claimed lost his recording package. He admitted, however, that for approximately a year, he had not been aware that the deed had not been recorded, and found out only when Zurawski's attorney alerted him. He finally recorded the deed on September 19, 2012, more than eighteen months after the closing.

Respondent claimed that, as part of the "lost" April 7, 2011 closing package, he had issued a check for $7,000, payable to the State Division of Taxation, to satisfy Zurawski's income

tax obligation. Assuming, arguendo, that respondent did so, he still did not monitor the check to ensure that Zurawski's obligation was satisfied, despite representing, during an OAE interview, that he was tracking the balance and disbursements from the Versfelt/Zurawski trust sub-account, and was aware that a $4,179.55 check that had been issued at closing had not promptly cleared.

In 2014, respondent provided the OAE with his Versfelt/Zurawski client ledger card, which listed the attorney trust account activity in connection with the real estate transaction. After respondent made proper disbursements, the Versfelt/Zurawski sub-account balance was $11,112. Between the date respondent deposited the Versfelt/Zurawski funds in his trust account, April 6, 2011, and the date he finally disbursed those funds, in October 2012, however, he failed to maintain the required $11,112 in escrow funds intact. Respondent knew that the bulk of these escrow funds, $7,000, were earmarked for payment of Zurawski's tax obligation. Nevertheless, on eight days, between July 2 and July 10, 2012, respondent's attorney trust account balance fell below $11,112, due to disbursements respondent made from his trust account to clients or third parties unrelated to the Versfelt/Zurawski transaction. On July 10, 2012, the Versfelt/Zurawski trust sub-account balance

had decreased to $1,037.38, or $10,074.62 less than was required to be held, inviolate. During the July 10, 2013 demand audit interview, respondent repeatedly stated that he "100 percent agree[d]" that the entire $11,112 should have remained in his trust account through October 2012. Thus, by his own words, respondent knew those funds belonged to his client and/or third parties.

Zurawski neither knew of, nor consented to, respondent's use of his escrow funds. Respondent, thus, knowingly invaded the Versfelt/Zurawski escrow funds by making disbursements from his trust account that were not related to the real estate transaction. His conduct violated RPC 1.15(a), RPC 8.4(c), and the principles of Wilson and Hollendonner. Although the complaint also charged that respondent violated RPC 1.15(b) (failure to promptly deliver funds), that rule is subsumed by our finding of knowing misappropriation. We, therefore, dismissed that charge.

Moreover, as an experienced real estate attorney, respondent should have closely monitored the status of the recording of the deed and the payment of Zurawski's income taxes. His contention that blame should be assigned to the U.S. Postal Service, even if the original recording package was truly lost, ignores his duty as the settlement agent and is without

merit. Respondent's failure, for approximately eighteen months, to ensure that the deed for the transaction was properly recorded, along with his failure to ensure that Zurawski's income tax obligation was satisfied, constituted gross neglect and lack of diligence, in violation of RPC 1.1(a), and RPC 1.3.

Count Three – The Waxmonsky Matter

The facts set forth in count three clearly and convincingly establish that respondent knowingly misappropriated the Ecenbarger estate trust funds. In May 2012, the Waxmonskys retained respondent to probate Ecenbarger's will and have them appointed as co-administratrices of his estate in Michigan. In the eighteen months after he was retained, however, respondent performed no work on Ecenbarger's estate and ultimately stopped communicating with his clients.

In January 2014, the Waxmonskys retained a new attorney, Pogorelec, to probate the estate. Despite Pogorelec's repeated efforts, respondent neither replied to his letters nor transferred the Ecenbarger file to him. Accordingly, Pogorelec proceeded with the probate of Ecenbarger's will, assisted by Michigan co-counsel, Amber Atkins.

Despite having performed no services for Ecenbarger's estate, respondent made numerous deposits and disbursements into

and from the estate trust sub-account. On October 10, 2012, he deposited a $106,559.72 check into that account, followed by eight more checks, totaling $31,656.72, payable to Ecenbarger, on May 23, 2013. The final eight checks were endorsed by "Gale R. Ecenbarger," despite the fact that they were issued several months after Ecenbarger's death. Theresa did not endorse these checks, nor did she authorize respondent to do so. In total, respondent deposited $138,216.44 into the Ecenbarger estate sub-account.

Between October 18, 2012 and January 9, 2013, respondent made seven disbursements to himself, totaling $30,000.00, against the Ecenbarger trust funds. Although he documented these disbursements on the client ledger card for Ecenbarger, he falsified the ledger card to make it appear that the first four checks, totaling $14,500, were issued after the $106,559.72 deposit had been made. Respondent's banking records, however, revealed that these four checks were cashed prior to that deposit, and, thus, other trust funds were invaded.

Respondent confirmed, during a demand audit interview, that he alone issued checks from his attorney trust account and that he alone maintained his financial records, including all client ledger cards. Thus, it was he, alone, who purposely manipulated the Ecenbarger client ledger card and, when he cashed those

first four checks, knowingly invaded $14,500 of other clients' and/or third-parties' funds held in his trust account.

Respondent claimed that, in accordance with a verbal agreement with Ecenbarger, he had the right to take $30,000 in legal fees from the estate trust funds. He also asserted that he had "narrative type description bills and agreed upon amounts" to support his position. However, despite his promises to do so, respondent never provided the OAE with any of those documents. Respondent also claimed that he had informed the Waxmonskys of his agreement with Ecenbarger and had discussed with Atkins the taking of these fees. Both Theresa and Atkins refuted his claims.

In January 2013, respondent issued and cashed two more trust account checks, in the amount of $5,000 and $3,000, respectively, drawn from the Ecenbarger trust funds. During the December 15, 2014 demand audit interview, respondent claimed that these checks were for fees he earned for work done for the estate, specifically for preparing "federal tax return workups" and "doing all of the Michigan probate."

On May 22, 2013, respondent obtained a $40,000 cashier's check, from the Ecenbarger trust funds, and invested the funds in a client's "no risk whatsoever [solar project]." He claimed that although Theresa had verbally approved this investment, she

had then expressed reluctance, and, thus, approximately nine days later, he returned the $40,000 to his trust account. Notably, respondent returned these funds via a personal check.

Theresa denied all of respondent's claims of right regarding his use of the Ecenbarger trust funds. Specifically, she stated that respondent never told her that he was owed legal fees for work done before Ecenbarger's death and that she never authorized respondent to take any money from the estate for legal fees. Moreover, respondent neither probated the will in Michigan nor prepared the federal tax return, forcing the Waxmonskys to hire other professionals to complete these tasks. Finally, she had not discussed a no risk, high-reward, solar investment opportunity with respondent and had not authorized him to use estate funds for any such purpose.

On July 5, 2013, respondent issued a $3,000 trust account check drawn from Ecenbarger trust funds, payable to Jacqueline Klapp. Respondent initially claimed this payment was for work Klapp had done on behalf of the estate. Prior to this interview session with respondent, however, the OAE had contacted Klapp, who denied that she had performed work on behalf of the Ecenbarger estate. Although respondent admitted he was mistaken, he never replaced the Ecenbarger trust funds that he paid to Klapp, and never provided an explanation for this disbursement.

On July 17, 2013, respondent issued yet another trust account check drawn from the Ecenbarger trust funds, in the amount of $31,168.68, to pay off a tax lien. After this check was cashed, the balance of the Ecenbarger trust funds was reduced to $74,048.76. During the December 15, 2014 demand audit interview, when questioned about this disbursement from the Ecenbarger trust funds, respondent stated "I have no clue . . . [That disbursement had nothing] to do with the estate of Ecenbarger. It is the redemption of a tax sale certificate which is in no way, shape, or form related to Ecenbarger."

In fact, this disbursement to pay off the tax lien was improper, and was made for the pecuniary benefit of respondent and others. Specifically, respondent admitted that he paid the tax lien to clear title on a property he owned, through a corporation, in order to hold it as an investment for himself and his investors.

On October 25, 2013, respondent made a $10,000 deposit of personal funds into the Ecenbarger trust sub-account, increasing the balance to $84,047.76. Then, on June 27, 2014, respondent deposited a check from the Estate of Marion F. McLeod, for $22,695.27, payable to Hunterdon County SPCA, into the Ecenbarger trust sub-account, increasing the balance to $106,743.13. Respondent admitted that this deposit was not

related to the Ecenbarger matter and belonged to another client, yet, he did not rectify this inaccurate deposit in his trust account or his corresponding records.

On August 27, 2014, respondent sent a letter to Atkins enclosing two checks totaling $148,116.44, payable to "the Estate of Gale Ecenbarger." When Atkins received these funds, she promptly requested an accounting of the estate's funds, because he had sent $9,900 more than she expected to receive. Respondent neither replied to Atkins' request nor provided her with an accounting of the estate's funds.

During an OAE interview, respondent stated that, in the spring of 2014, he decided to refund to the estate the entirety of the $30,000 legal fee he had taken, because he did "not want to have conflict with Theresa and Martha [Waxmonsky]." Additionally, respondent stated that the extra $10,000.00 sent to Atkins represented interest that the estate funds had earned. Respondent, however, failed to provide the OAE with an accounting or any further details about this purported interest.

It appears to us that respondent used the Ecenbarger trust funds as a personal working capital account, forging Ecenbarger's checks for deposit and removing $30,000 in purported legal fees. In addition, after significant funds had been deposited into the Ecenbarger trust sub-account, he paid

Klapp for services she had provided to his firm on an unrelated matter, used $31,168.68 to clear title on an investment property he purchased, and used $40,000 to make an investment, albeit extremely short-term, in another client's solar project. These disbursements were all made without the Waxmonskys' consent or authorization.

In an apparent attempt to cover his tracks, respondent subsequently deposited $10,000 of his own funds and $22,695.27 from another estate into the Ecenbarger trust sub-account. After the Waxmonskys had retained another attorney and filed an ethics grievance against him, respondent suddenly refunded all of the $30,000 in legal fees he had previously claimed he had earned.

Respondent, thus, knowingly invaded the Ecenbarger estate trust funds and the trust funds of other clients and/or third parties by making the above-detailed disbursements, in violation of RPC 1.15(a), RPC 8.4(c), and the principles of Wilson and Hollendonner. As in the Zurawski matter, we dismissed the RPC 1.15(b) charge.

Finally, aside from having some discussions with the Waxmonskys, respondent did no work on the Ecenbarger estate, forcing his clients to obtain other attorneys and professionals to complete the tasks for which respondent had been retained. Respondent's utter failure to take any action for the Ecenbarger

estate constituted gross neglect and lack of diligence, in violation of RPC 1.1(a) and RPC 1.3.

Count Four – The Gouraige/Marinaro Matter

The facts set forth in count four clearly and convincingly establish that respondent knowingly misappropriated Isleib's escrow funds. In May 2009, respondent represented Gouraige and Marinaro in the purchase of real estate from Isleib. As settlement agent for this transaction, respondent was responsible for the escrow of $10,000 of Isleib's sale proceeds to guarantee certain payments and duties owed to his clients pursuant to a use and occupancy agreement.

Eventually, respondent attempted to convince Gouraige that Isleib had forfeited the $10,000 in escrow funds. Gouraige, however, made efforts to return the funds to Isleib, but respondent failed to return his calls. Gouraige became suspicious that respondent would never return Isleib's escrow funds, despite Gouraige's position that Isleib had complied with the use and occupancy agreement. In October 2009, Gouraige expressly instructed respondent, via both e-mail and telephone calls, to release the escrow funds to Isleib.

In reply, respondent assured Gouraige that the $10,000 would be released to Isleib. Instead, respondent took $9,500 of

the escrow funds. He had no authorization to do so. Thus, respondent is guilty of knowingly misappropriating those funds, in violation of RPC 1.15(a), RPC 8.4(c), and the principles of In re Wilson and In re Hollendonner. We dismissed the RPC 1.15(b) charge.

The violations of RPC 1.1(b) and RPC 1.3 alleged in this count are not supported by the facts set forth in the complaint and, we, therefore, dismissed them. As to RPC 1.3, the complaint fails to contain facts that would sustain a finding that respondent lacked diligence in the real estate transaction. In addition, the complaint does not support a finding of at least three instances of neglect, which is required for a determination that an attorney is guilty of a pattern of neglect. See, In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005).

Count Five – The Prostack Matter

The facts set forth in count five clearly and convincingly establish that respondent knowingly misappropriated the Prostack Family Trust funds.

In 2002, respondent represented John and Sophie Prostack in the sale of their family farmstead. $729,795.28 in sale proceeds were deposited into respondent's attorney trust account to fund

the Prostack Family Trust, which respondent had created. As trustee, respondent disbursed a total of $323,000 to the Prostacks and their daughter, Patricia Springwell, the trust's three beneficiaries. John and Sophie Prostack died in 2004 and 2007, respectively, leaving Springwell as the sole beneficiary of the trust.

In addition to those proper disbursements, between 2003 and 2011, respondent made numerous improper transfers, in excess of $720,000, from the Prostack Family Trust funds to other clients' trust sub-accounts. These transfers were documented through bank records and respondent's client ledger cards. Respondent had no authorization or consent to use these trust funds for other clients.

Respondent transferred the Prostack trust funds to at least nine different clients' trust sub-accounts, all with the notation "Loan." After each "loan" transfer was made, the "loan" funds would be immediately disbursed in behalf of those clients, to various payees, including respondent, thereby invading the funds that respondent was required to hold for the Prostack Family Trust.

Respondent reimbursed some, but not all, of the funds that were "loaned" to other clients from the Prostack Family Trust. Respondent made six transfers of Prostack trust funds to the

Morgan sub-account, totaling $224,500. He then disbursed $31,750 of these funds to himself. None of the funds transferred to the Morgan sub-account were reimbursed to the Prostack Family Trust sub-account.

Respondent failed to produce any of the records or information that the OAE had requested regarding the Prostack trust funds and these "loan" transfers. As of May 15, 2015, the balance of the Prostack trust funds had decreased from the original corpus of $729,795.28 to only $6,000, with only $323,000 paid to the actual beneficiaries of the trust.

By making these unauthorized "loan" disbursements, respondent knowingly invaded the Prostack Family Trust funds, in violation of RPC 1.15(a), RPC 8.4(c), and the principles of Wilson and Hollendonner. We again dismissed the RPC 1.15(b) charge.

This count included a plea in the alternative, alleging a violation of RPC 1.8(a) (prohibited business transaction with a client), to be addressed in the event that no finding of knowing misappropriation was made. Given our finding of knowing misappropriation, we need not reach a determination in respect of the alternative RPC 1.8(a) charge.

Count Six — The Mazzei and Friese Matters

The facts set forth in count six clearly and convincingly establish that respondent knowingly misappropriated clients' and/or third parties' trust funds.

As of July 2, 2006, respondent was holding $105,000 in his attorney trust account in behalf of a client, Mazzei. On July 3, 2006, respondent issued a $57,175.76 check, payable to Ocwen Loan Service, from the Mazzei trust funds, leaving a balance of $47,824.24 in that trust sub-account.

On August 22, 2006, respondent transferred exactly $57,175.76 from another client's (Friese's) trust sub-account to the Mazzei trust sub-account, returning the Mazzei balance to $105,000. That same day, respondent issued a $105,000 check, payable to the Estate of Wesley, from the Mazzei trust funds, reducing the balance of the Mazzei trust sub-account to zero. During the May 15, 2014 demand audit interview, respondent admitted that Mazzei and Friese had no relationship with one another.

Respondent's transfer of $57,175.76 from the Friese trust sub-account to the Mazzei trust sub-account reduced the balance of the Friese sub-account to $134,595.47, as reflected on respondent's Friese client ledger card. On March 5, 2007, respondent issued a $191,771.23 check to Dobin, creating a

$57,175.76 shortage in the Friese trust sub-account. Accordingly, respondent knowingly invaded other clients' and/or third parties' funds that he was required to hold, inviolate, in his attorney trust account.

Respondent knew that he had invaded other clients' funds by issuing the Dobin trust check because, on February 3, 2010, approximately three years later, he deposited personal funds of exactly $57,175.76 into his attorney trust account.

By making the above-detailed disbursements, respondent knowingly invaded clients' and/or third parties' trust funds, in violation of RPC 1.15(a), RPC 8.4(c), and the principles of Wilson and Hollendonner. Again, we dismissed the RPC 1.15(b) charge.

Count Seven – The Wire Transfers

The facts set forth in count seven clearly and convincingly establish that respondent knowingly misappropriated clients' and/or third parties' trust funds.

As set forth above, the OAE reconstructed respondent's trust account records for January 1, 2009 through July 31, 2014. Those records revealed two transactions that respondent failed to document on his client ledger cards.

First, on November 16, 2012, respondent wired $25,000 from his trust account to Marino, referencing an active client, Daub's, for which he had a trust sub-account. The wire was sent to pay for landscaping products that Daub's had purchased. Respondent, however, neither recorded this wire on his client ledger card for Daub's trust sub-account, nor attributed the transaction to any other client's trust funds. Moreover, respondent was not holding sufficient funds in his trust sub-account for Daub's when this wire was sent.

Second, on May 21, 2013, respondent wired $28,475 from his trust account to PNC Bank, with the reference "3one4events." Again, respondent did not document this wire on any client ledger card. The OAE's reconstructed trust account records did not attribute this wire to any client matter.

Because respondent was holding no funds, or insufficient funds, in his attorney trust account to support these wire transfers, he knowingly invaded other clients' and/or third parties' trust funds, in violation of RPC 1.15(a), RPC 8.4(c), and the principles of Wilson and Hollendonner. We dismissed the RPC 1.15(b) charge.

Count Eight — Trust Account Shortages

The facts set forth in count eight clearly and convincingly establish that respondent knowingly misappropriated clients' and/or third parties' trust funds.

On multiple occasions, even when given "credit" for hundreds of thousands of dollars of trust funds that he already had misappropriated, as detailed under counts two through seven above, respondent's trust account fell well below the balance that he was required to maintain in behalf of his clients and/or third parties. Between June 30, 2012 and September 30, 2013, respondent's trust account was short in amounts varying between at least $86,468 and $138,943. All of these shortages were caused by respondent's unauthorized use of funds belonging to his clients and/or third parties whom he served in a fiduciary capacity.

Specifically, on June 30, 2012, respondent should have been holding $239,559.16 in his trust account in behalf of thirty clients and/or third-parties. On that date, however, the balance of his trust account was only $120,316.07, creating a trust account shortage of $138,943.09.

On September 30, 2012, respondent should have been holding $139,897.90 in his trust account in behalf of thirty-one clients and/or third parties. On that date, however, the balance of his

trust account was only $53,429.81, creating a trust account shortage of $86,468.09, even after respondent had deposited personal funds into his trust account.

Respondent claimed that the shortfall in his trust account was due to a 2004 bank error, made by Peapack-Gladstone Bank, which had mistakenly credited a $120,000 deposit to the Friese trust sub-account as only a $12,000 deposit. Respondent conceded that he had no documents from the bank confirming this improperly credited deposit or his efforts to correct his trust account.

In July 2012, Peapack-Gladstone Bank alerted respondent that his attorney trust account contained insufficient funds to honor checks that had been presented. Respondent claimed that this was the first time he realized that the alleged 2004 bank error had never been corrected. Respondent, however, failed to produce the Friese client file or any documentation from the bank to support his claims that the bank had made an error in recording the Friese deposit.

In response to the July 2012 alert from the bank, respondent made a series of six deposits, totaling $110,000, into his trust account, and attributed the deposits to the Friese trust sub-account. Three of the deposits, totaling $67,500, were made from respondent's personal funds. Respondent

claimed that he credited these deposits to the Friese sub-account because "[he] didn't know where to put them."

On September 30, 2013, respondent should have been holding $328,340.42 in his trust account in behalf of forty-six clients and/or third-parties. On that date, however, the balance of his trust account was only $194,983.49, creating a trust account shortage of $133,359.93.

Even if we accepted as true respondent's claim regarding the 2004 Peapack-Gladstone banking error, the $108,000 shortage that the banking error would have created is well exceeded by the shortfalls set forth above.

The record clearly establishes that respondent systematically helped himself to trust funds either to suit his own personal needs or those of other clients or third parties. What is clear is that he did so shamelessly, without authorization, and to the substantial detriment of those clients and third parties. For this, he must be disbarred. In light of our finding, there is no need to address discipline for respondent's additional ethics violations.

Member Boyer abstained.

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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Walter N. Wilson
Docket No. DRB 15-273

Decided: May 20, 2016

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Abstain	Did not participate
Frost	X					
Baugh	X					
Boyer					X	
Clark	X					
Gallipoli	X					
Hoberman	X					
Rivera	X					
Singer	X					
Zmirich	X					
Total:	8				1	

Ellen A. Brodsky
Chief Counsel