SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-136
District Docket No. XIV-2015-0571E

IN THE MATTER OF	
KRISTI A. FREDERICKS	
AN ATTORNEY AT LAW	

Decision

Argued: November 17, 2016

Decided: January 30, 2017

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear, despite proper notice.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14(a)(4), based on respondent's disbarment by consent in Pennsylvania for violations of that jurisdiction's equivalents of New Jersey RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with the client), RPC 1.4(c) (failure to explain a matter to the extent

reasonably necessary for the client to make informed decisions), RPC 1.5(a) (unreasonable fee), RPC 1.15(a) (failure to safeguard funds), RPC 1.15(b) (failure to promptly return funds to the client), RPC 1.15(c) (failure to segregate property in which both the client and attorney have an interest), RPC 1.16(d) (failure to take steps to protect the client upon termination of the representation), RPC 3.3(a)(1) (false statement of fact or law to a tribunal), RPC 3.3(a)(4) (offering evidence the lawyer knows to be false), RPC 3.4(b) (falsifying evidence), RPC 7.1 (making false or misleading communications about the lawyer or the lawyer's services), RPC 8.1(a) (knowingly making a false statement to disciplinary authorities), RPC 8.4(a) (violate the RPCs), RPC 8.4(b) (criminal act that reflects adversely on the honesty, trustworthiness or fitness of the attorney), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

The OAE originally sought a suspension of three or six months. In a June 3, 2016 reply to the OAE's brief, respondent stated that she does not oppose the OAE's recommendation. She also cited a number of facts that are in direct conflict with facts she accepted as true when consenting to disbarment in the Pennsylvania disciplinary proceeding.

By letter dated September 9, 2016, the Office of Board Counsel re-scheduled the matter and requested the parties to file briefs addressing why various aspects of respondent's conduct, which she admitted in the Pennsylvania disciplinary matter, do not constitute knowing misappropriation in New Jersey.

On September 23, 2016, the OAE filed its reply brief asserting that, on further review, respondent should be disbarred for knowing misappropriation under In re Wilson, 81 N.J. 451 (1979). In addition, the OAE cited In re Ort, 134 N.J. 146 (1993), where the attorney was disbarred for collecting excessive legal fees in an estate matter, discussed in detail below. Respondent failed to file an additional brief.

We determine to grant the OAE's motion and recommend to the Court that respondent be disbarred for her knowing misappropriation of client funds.

Respondent was admitted to the New Jersey bar in 2002. She was admitted in Pennsylvania in 2006. She has no prior discipline in New Jersey.

On December 2, 2015, the Supreme Court of Pennsylvania accepted respondent's disbarment by consent. In a sworn resignation statement dated October 7, 2015, respondent acknowledged that Pennsylvania ethics authorities had issued two

"letter requests for statement of respondent's position" (the grievances), and that the facts contained in them were true. Moreover, respondent conceded that she was submitting her resignation with the knowledge "that she could not successfully defend herself against the charges of professional misconduct" contained in the grievances.

I. The Ahern Estate Matter

In March 2014, Michael J. Howe, as executor, retained respondent to represent the Estate of Vera Ahern (the Ahern Estate) in Orphan's Court, Chester County, Pennsylvania. At their initial meeting, Howe gave respondent original stock certificates, uncashed checks, a letter regarding unclaimed property, savings bonds, a will, bank statements, and insurance policies.

At an April 14, 2014 meeting, Howe executed a fee agreement on attorney letterhead reflecting respondent's 1224 West Lincoln Highway, Valley Township, Pennsylvania address. The fee agreement stated that "[t]he charge for the services to administer the estate are at a rate of ten percent of the total assets of deceased at the time of death which includes property that does not need to be probated," with payment due prior to funds being provided to beneficiaries. The agreement made no

provision for the fees to be non-refundable in nature. Respondent failed to obtain Howe's written consent for the deposit of the advance legal fees and expenses into an account other than a trust account.

On April 9, 2014, respondent filed a petition for probate and grant of letters testamentary in connection with the Ahern Estate. Respondent was named as counsel, and her address was listed as the 1224 West Lincoln Highway address. On that same date, Howe was issued letters testamentary.

Pursuant to written instructions from respondent, on July 26, 2014, Howe opened a checking account for the Ahern Estate at First Niagara Bank. He then transferred $93,000 from the decedent's checking account into the new account. Thereafter, at respondent's request, Howe gave respondent "at least" three blank signed checks from the estate account.

On August 1, 2014, the Chester County Register of Wills sent Howe a notice that a required certification of notice to beneficiaries had not yet been filed and that sanctions could be imposed if not received within thirty days.

On September 26, 2014, respondent issued to herself two of the blank signed estate checks, in the amounts of $25,000 and $32,000, respectively. The memo line on the checks indicated that they were for fees. On that same day, respondent deposited

the two checks into a "Citadel bank account numbered 6452****," thereby taking a total of $57,000 of estate funds.[1]

The Citadel account was not identified by respondent, as required on her "Annual Fee Form," as an account holding client funds. Moreover, the Citadel account was not a proper trust account.

On November 5, 2015, respondent sought to negotiate the third estate account check Howe had signed in blank, which she issued to herself for $9,000. The check was returned, however, for insufficient funds.

Respondent neither gave Howe an invoice describing legal work performed on account of the estate nor communicated with him prior to completing and negotiating the estate checks.

According to the Pennsylvania grievance, respondent "did not earn the $57,000 in fees that [she] took" from the Ahern Estate, Howe did not authorize her to take the fees, and they were "advanced fees for the most part as [respondent] had performed very little work in connection with the matter, and

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[1] In another client matter discussed below (the Peszko matter), the Citadel bank account bearing account number 6452**** is identified as a federal credit union business account that respondent owned jointly with her husband.

were excessive even if [she] had fully performed, which [she] had not."

Howe developed concerns about the representation and, in February 2015, retained Jayne Garver, Esq. to assist him in the completion of the Ahern Estate. By letter dated February 23, 2015, Garver informed respondent that a review of the case revealed that respondent (1) never paid inheritance taxes or requested an extension of time to do so, resulting in a penalty; (2) failed to furnish Howe with a "fee letter;" and (3) had taken significant funds from the Ahern Estate. The letter also requested the return of all unearned legal fees and the client file.

In a March 10, 2015 reply to Garver, respondent stated:

> In regards to your letter, the necessary forms were completed for the estate. In regards to fees, this is a very complicated file in which several hours have been utilized to settle the estate which I document for every case. Furthermore, only a few items remain to be completed in which I would be happy to discuss/assist you with if you are inclined. Accounts were not transferred and resulted in negative balances in the past therefore I was not paid my necessary fees. I have attached the fee agreement signed by the executor for your review. Our standard engagement letter was also mailed. Since there are a few items that should be completed on the estate I will forego the full ten percent fee charged but would need payment to release the file. Once payment is received, I will have my assistant hand deliver the file to your office and will also be happy to assist you. If payment is not received my

> office will be exercising a lien on the file until the fill [sic] is paid. If it is not paid timely then I will be required to put a claim against the estate.
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> [OAEbEx.C¶26.][2]

By letter to respondent also dated March 10, 2015, Howe reiterated the termination of the representation and requested that she send all unearned legal fees and the client file to Garver.

On March 17, 2015, Garver sent respondent a letter questioning respondent's entitlement to additional fees, because Garver considered the $57,000 that respondent had already taken to be "extreme" for the "several hours" of legal work respondent claimed to have performed. Garver also requested respondent's time sheets for the work performed, and the entire client file. Garver offered to travel to respondent's office to retrieve those items.

On March 28, 2015, Garver entered her appearance in the Ahern Estate matter and filed an inheritance tax return listing $498,740 in assets and taxes due of $17,998.

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[2] OAEb refers to the OAE's April 15, 2016 brief in support of the motion for reciprocal discipline.

On May 4, 2015, Norman Pine, Esq.[3] sent respondent a letter on Howe's behalf, stating that he and Garver had reviewed the Ahern file in the Orphan's Court and had determined that respondent had filed only one document in the matter, a "5.6 certification." Pine noted that respondent had apparently taken no action to seek the reissuance of dividend checks, to obtain unclaimed property, or to redeem bonds. Pine requested the return of the entire $57,000 fee and the original client file.

Respondent did not (1) reply to Garver or Pine; (2) account for the fees taken; or (3) return the unearned legal fees and client file.

II. The Elmer Estate Matter

In April 2014, Raymond Keith Elmer, as executor, retained respondent to represent the Estate of G. Raymond Elmer (the Elmer Estate), in the Orphan's Court, Chester County, Pennsylvania. At their initial meeting, Elmer gave respondent original insurance and banking documents pertaining to the Elmer Estate, which consisted of $40,000 in bank deposits, a $124,000 annuity, and two life insurance policies totaling $28,000.

[3] Pine's role in this client matter is not clear from the record. His name appears in the Elmer Estate matter discussed below.

At the time, respondent told Elmer that it would take about six months to finalize the estate, and that her fee was "$350/hour or 10%." She did not, however, set forth the basis or rate of her fee in writing. Respondent also gave Elmer specific instructions regarding certain tasks of the executor.

After receiving a communication from respondent that documents were ready for him at the courthouse, Elmer traveled there, only to be told that additional steps were required to obtain "short certificates," information that respondent had not relayed to Elmer. Courthouse personnel assisted Elmer in leaving a telephone message for respondent about the issue. Respondent received the message, but did not reply to it.

On April 24, 2014, Elmer returned to the courthouse and, through his own efforts, obtained short certificates. Later that day, Elmer also opened a checking account for the estate.

On April 28, 2014, Elmer tried to telephone respondent about estate notices required to be published in the newspaper. Because respondent did not return the call, Elmer arranged for a notice to be published in a local newspaper. Weeks later, respondent informed Elmer that publication was required in a second newspaper as well.

Respondent requested five signed blank checks upon Elmer's opening of the estate checking account. Accordingly, on May 9,

2014, Elmer arranged for the delivery of those items to respondent.

On May 26, 2014, Prudential Insurance Company (Prudential) informed Elmer, via letter, that Prudential had not received a completed claim form or a copy of the death certificate for the decedent. The letter further stated that, unless Elmer provided those documents within one month, Prudential would forward the policy proceeds to "unclaimed property." At Elmer's request, Prudential granted him an extension of time to accomplish those tasks.

On June 12, 2014, Elmer received an e-mail requesting that he visit respondent's office before June 19, 2014, to sign a tax form. Although Elmer did so, no one explained the document to him, and it was subsequently filed without the signature of the preparer.

On June 13, 2014, respondent paid estate inheritance taxes ($253.36), apparently using one of the blank signed estate checks provided by Elmer. That check, payable to taxing authorities, was in a "grossly insufficient" amount, given the value of the Elmer Estate. Respondent also failed to include the required inheritance tax return schedules with the check.

In a July 7 or 14, 2014 telephone conversation with Elmer, respondent commented that she "needed [her] fee." Without any

further discussion about the topic, on July 25, 2014, respondent unilaterally completed a signed blank estate check for $28,972.50, marked on the memo line for "fees," and deposited it into her Citadel account. On that same date, respondent filed a notice to beneficiaries and intestate heirs under Pennsylvania Rule 5.6(a).

The Citadel account was not a proper attorney trust account. Moreover, respondent made the deposit without providing to Elmer an invoice of legal services or any advance notice of her intention to take fees in that amount. According to the grievance, Elmer had not authorized the fees and respondent had not earned them. Rather, they were "advanced fees," as respondent had performed little legal work on the matter. The fees were excessive even if respondent had fully performed.

When, on July 26, 2014, Elmer questioned respondent about the $28,972.50, she told him that the funds were for legal fees, and that she intended to take an additional five percent (presumably of the gross value of the estate) because she had settled the estate of the decedent's wife as well as the Elmer Estate. Respondent, however, had not settled the wife's estate. "Outraged" by respondent's actions, Elmer demanded an itemized bill reflecting all services provided on his behalf.

In response to Elmer's demand for an itemization, respondent replied that she would have to look back through her records to "come up with something." She also told Elmer that the estate matter had been so difficult that she and her staff "had been working on the matter every day."

On a date not in the record, Elmer terminated the representation and requested the return of the remaining blank checks and an accounting to substantiate respondent's fees. Respondent returned only the checks and an original folder containing insurance documents.

On August 27, 2014, Elmer's new attorney, Dawson R. Muth, Esq. sent respondent a letter informing her that Elmer had retained him for the estate matter. Muth requested that respondent return the original estate file, including any remaining checks. He also characterized the $28,972.50 fee as "outrageous," and demanded that those funds be returned to the estate. Finally, Muth noted that the fee was "particularly troubling," because respondent had no written fee agreement with Elmer.

Although respondent received Muth's letter, she did not reply to it.

Respondent also failed to reply to numerous e-mails and telephone calls from attorney Pine, described in the grievance

as Elmer's second attorney. On January 22, 2015, Pine filed a petition seeking the return of estate property and unearned fees. On February 17, 2015, respondent's counsel, Anthony T. Verwey, Esq. filed an answer to the petition. Attached to the answer was a copy of an April 7, 2014 fee agreement that respondent had never given Elmer during the representation.

In her answer to Elmer's complaint, respondent claimed that she expended "substantial time on behalf of the estate by, inter alia, marshalling assets, addressing Social Security issues, resolving investment account matters related to Mr. Elmer's deceased mother, and other estate matters." Respondent, however, provided no documentation to support the $28,972.50 fee she had unilaterally taken.

Respondent neither returned the fee nor the client file to allow Pine to complete the administration of the estate.

Finally, respondent failed to place the contested $28,972.50 in a separate trust account pending resolution of the fee dispute with Elmer.

III. The Attorney Advertising Matter

On a date not disclosed in the record, respondent notified Pennsylvania's attorney registration system that she had changed her office address to that of her home. Nevertheless, on her

legal services website (ftlaw.com), she represented that she maintained offices with staff in the following Pennsylvania locations: Philadelphia, Malvern, King of Prussia, Plymouth Meeting, Bala Cynwyd, and Radnor. Respondent failed to remove these office locations from her website after relocating to the sole office location in her home.

Respondent was charged in the Ahern, Elmer Estate, and the advertising matter with having violated the Pennsylvania equivalent of the following New Jersey RPCs: RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.4(c); RPC 1.5(a); RPC 1.15(a); RPC 1.15(b); RPC 1.15(c); RPC 1.16(d); RPC 3.3(a)(1); RPC 3.3(a)(4); RPC 3.4(a); RPC 7.1; RPC 8.1(a); RPC 8.4(a); RPC 8.4(b); RPC 8.4(c); and RPC 8.4(d). Two other Pennsylvania RPCs were charged but have no New Jersey equivalent: Pennsylvania RPC 1.15(i) (a lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner); and Pennsylvania RPC 1.15(m) (all qualified funds that are not fiduciary funds shall be placed in an IOLTA account).

IV. The Peszko Matter

On November 3, 2014, Donald Peszko retained respondent to file a qualified domestic relations order (QDRO), pursuant to a written fee agreement. The agreement did not state that respondent's fee was non-refundable.

Respondent failed to obtain Peszko's informed, written consent to deposit legal fees and expenses, paid in advance, in a non-trust account and to withdraw these funds before the legal fees were earned or the expenses incurred.

On November 3, 2014, Peszko satisfied respondent's fee "pre-payment" requirement, giving her a check for $2,500. On November 12, 2014, respondent deposited Peszko's check into the Citadel business account, held jointly with her husband. On January 12, 2015, respondent required Peszko to pay another $2,500, which she then deposited into her Citadel personal account.

On May 15, 2015, respondent sent Peszko an invoice stating that she would send him invoices in the future, instead of requiring the periodic infusion of funds into what she referred to as "the escrow account." The invoice sought a further $5,200, representing an alleged sixteen hours of additional legal services from February through May 15, 2015, billed at a rate of $325 per hour.

Throughout the representation, Peszko had difficulty contacting respondent. On those occasions when he was able to reach her by telephone, respondent represented to him that she was in contact with the lawyers who represented him and his former wife in connection with their divorce.

Peszko instructed respondent to contact "Jo Bell," a paralegal at the U.S. Postal Service, his employer, about the specific language to be included in the QDRO. Respondent failed to do so. Therefore, Peszko was compelled to contact Bell himself. He then "faxed" that information to respondent. Although respondent told Peszko that she would arrange for his former wife's lawyer to address any corrections to the QDRO, she failed "to provide [him] any documentation or other information to substantiate that [she] had performed any legal services of any value for him."

Peszko became disgruntled and, on May 25, 2015, sent respondent a letter terminating the representation and expressing his dissatisfaction that, after spending $5,000 in legal fees and wasting much time, he had achieved no progress in the matter. Peszko also requested the return of his file, as well as an accounting of respondent's legal services.

Respondent did not reply to Peszko's letter, did not return the unearned fees, and failed to return the original client file.

In July 2015, Peszko sued respondent for $5,000 in a civil action in the Commonwealth of Pennsylvania, Court of Chester, Magisterial District Court (District Court). At a hearing in the matter, respondent moved several invoices into evidence, none of which she had ever provided to Peszko. In fact, respondent had prepared those documents retroactively, in an attempt to substantiate the $5,000 in fees Peszko had paid her.

At the court hearing, respondent falsely represented to the District Court that she had sent Peszko those monthly invoices, and that she had earned all of the funds taken, as well as the additional fees billed ($5,200), presumably a reference to the alleged additional sixteen hours of work reflected in her May 2015 invoice.

On September 8, 2015, during the Pennsylvania disciplinary proceeding, respondent presented a false fee agreement, purportedly signed by Peszko, and submitted it to disciplinary authorities. In fact, Peszko never saw or signed that agreement. The handwritten name, signature, and date were forged by respondent or someone at her direction. The forged agreement provided for a $5,000 non-refundable retainer. As noted

previously, the fee agreement Peszko signed when he originally retained respondent contained no such provision.

According to the grievance, respondent made further misrepresentations to disciplinary authorities by submitting three additional documents: two hourly time sheets and a "Client Ledger" used in the District Court litigation.

When replying to disciplinary authorities' requests for documents in the Peszko matter, respondent failed to turn over the actual fee agreement signed and dated by Peszko, electing instead to furnish the aforementioned forged agreement. She also failed to turn over the May 15, 2015 letter and invoice; identify her January 2015 receipt of funds from Peszko; and disclose her use of an unapproved joint account at Citadel to deposit Peszko's advance fees.

On October 9, 2015, the District Court entered a $1,162.50 judgment in Peszko's favor. As of November 17, 2015, respondent had not filed an appeal, paid the judgment, or returned to Peszko original documents belonging to him.

Subsequently, Peszko retained a new attorney who agreed to complete the QDRO for a $1,000 flat fee.

Respondent was charged in the Peszko matter with having violated the Pennsylvania equivalent of the following New Jersey RPCs: RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.5(a), RPC 1.15(b),

RPC 1.15(c), RPC 1.16(d), RPC 3.3(a)(1), RPC 3.3(a)(4), RPC 3.4(b), RPC 7.1, RPC 8.1(a), RPC 8.4(a), RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d). Two other Pennsylvania RPCs were charged but have no New Jersey equivalent: Pennsylvania RPC 1.15(i) and Pennsylvania RPC 1.15(m).

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
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> (E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (E).

"[A] final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." R. 1:20-14(a)(5). Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

In Pennsylvania, respondent was disbarred by consent after conceding that all of the facts alleged in two grievances were true and that she had violated a myriad of Pennsylvania Rules of Professional Conduct. The Pennsylvania disciplinary authorities did not tie respondent's actions in the Ahern Estate, Elmer Estate, and Peszko matters to specific RPC violations. It is evident, however, that respondent: grossly neglected and did not diligently pursue all three matters; charged excessive fees; failed to safeguard client funds (discussed in detail below); failed to communicate with the clients; provided the District Court with falsified documents in the Peszko matter and, further, lied to that court that she furnished Peszko with monthly invoices for legal fees; failed to return unearned fees

in all three matters; failed to return client files upon termination of the representations; forged Peszko's signature to a phony document; and, in an attempt to substantiate excessive legal fees in the Peszko matter, lied to disciplinary authorities about the authenticity of the document. Respondent ran afoul of Pennsylvania's attorney advertising rules by failing to delete references to her office locations that were no longer in operation. She also engaged in conduct prejudicial to the administration of justice by falsifying and then presenting evidence in Peszko's District Court litigation and again when presenting those documents and a forged document to Pennsylvania disciplinary authorities during that investigation.

In respect of RPC 8.4(b), respondent engaged in criminal conduct when she forged, or caused to be forged, Peszko's signature on a fabricated fee agreement that Peszko had never seen or signed. Finally, respondent's most serious misconduct involved her failure to safeguard client funds in the Ahern Estate and Elmer Estate matters, when unilaterally deciding to take legal fees to which she admittedly was not entitled. Respondent's misconduct in this respect amounted to knowing misappropriation.

Early in the Ahern Estate matter, respondent directed the executor to issue to her several blank, signed checks. Although

respondent filed just a single document in the matter and never resolved the estate, she used two of the blank, signed estate checks to take a total fee of $57,000. She made the checks payable to herself, and deposited them to the Citadel account that she held jointly with her husband. A third check, also made payable to respondent, for $9,000, was returned for insufficient funds. She engaged in this conduct without the knowledge or consent of the executor, and despite the prohibition in Pennsylvania RPC 1.15(i), which, as previously noted, provides:

> A lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner.

In the Elmer Estate matter, too, respondent instructed the executor to furnish signed, blank checks, then used one of them to take a $28,972.50 fee to which she, admittedly, was not entitled. In fact, respondent conceded the following facts in respect of both estate matters: the clients had not given informed consent, confirmed in writing, to her withdrawal of those fees prior to having earned them; she had not earned the fees; the clients had not authorized the fees; she had performed very little work in connection with those matters; and, even if

she had fully performed the work, the fees would have been excessive.

In order to avoid a finding of knowing misappropriation, an attorney who has helped himself to client or escrow funds, on the alleged basis that he was owed fees, must establish a good-faith, reasonable belief that he or she is entitled to those fees.

In In re Li, 213 N.J. 523 (2013), the attorney was disbarred after taking legal fees to which he was only partially entitled. His disbarment for knowing misappropriation hinged on several facts that undermined his claimed belief that he was entitled to more than $1.2 million in legal fees (out of a $3.5 award), even though his written fee agreement with the clients did not specifically authorize him to take any more than approximately $325,000. In addition, Li was aware that the clients disputed the fee. Instead of informing them about their option to request fee arbitration or seeking legal redress on his own to establish the reasonableness of his fee, he placed about $1.2 million of claimed legal fees into bank accounts in his children's names, over which his wife, not he, had control. He also wired a large portion of those funds to China, in an attempt to put them out of reach of anyone attempting to seize them from within the United States. In the Matter of Feng Li,

DRB 12-310 (April 3, 2013) (slip op. at 43-44). In Li, we analyzed the reasonable belief standard required of attorneys who take client funds to which the attorney's entitlement is questionable, as follows:

> In In re Rogers, supra, 126 N.J. 345 [(1991)], American Express improperly placed a levy on the attorney's trust account, resulting in the return of a check issued to pay off a client's mortgage, following a real estate closing. The mortgagee, an individual, accepted an initial payment of more than $25,000 and permitted the attorney to pay the $3,500 balance when American Express reimbursed the attorney. After the attorney received the reimbursement, he used the funds for his own purposes, believing that he did not have to satisfy the mortgage (now his personal obligation) out of those precise funds. The Court found that the attorney reasonably believed that the American Express funds had been converted from escrow funds to his own funds, subject to the satisfaction of the debt. The Court concluded that, although the attorney was incorrect, the misappropriation was not knowing because of his reasonable belief that the funds were available for his use.
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> In another case, In re Cotz, 183 N.J. 23 (2005), the attorney reasonably believed that he had more funds in his trust account than were actually on hand. Because he had forgotten that he had borrowed $9,000 from a client, some of the monies in his trust account that he believed were his actually belonged to a client. In addition, the bank where the attorney maintained his accounts had erroneously debited more than $10,000 against his trust account, instead of his business account, when business account checks were returned for insufficient funds. Because the attorney did not reconcile his trust account, he failed to detect these chargebacks. The attorney, thus, reasonably, but mistakenly, believed that he had $19,000 in his trust account and was not aware of the shortage.

The Court has held that the burden of proof is on the attorney to establish the reasonableness of the belief:

> Respondent also testified that whenever he withdrew escrow fees in advance of a closing, the withdrawal was based on his assumption that he had an equivalent "cushion" in his trust account. However, respondent did not attempt to offer any specific factual basis for that assumption, and respondent's own expert testified that when he performed a reconciliation of the trust account he determined that "there weren't always sufficient funds on hand, and he was always indeed out of trust." Respondent's erroneous belief that he had an equity cushion was unfounded, and respondent failed to offer evidence to sustain the contention that his belief in the existence of an adequate cushion was reasonable or justifiable [emphasis added].
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> [In re Mininsohn, 162 N.J. 62, 73-74 (1999).]

If the attorney fails to sustain that burden, a finding of knowing misappropriation results. In In re Sommers, 114 N.J. 209 (1989), the attorney in a matrimonial case received an income tax refund check from which he had been ordered by the court to make certain disbursements on behalf of his client and her husband. Instead, the attorney used the check for his personal expenses, claiming that the client owed him legal fees. Sommers offered no documentation, such as a fee agreement or bills issued to his client, to support his claim to legal fees. Moreover, he advanced no credible explanation for his failure to disburse the funds to his client's husband, who had no obligation to pay his wife's legal fees. The Court found that the attorney did not have an honest belief that he was entitled to the refund as his fee. Finding Sommers guilty of knowing misappropriation of both client (the wife) and

escrow (the husband) funds, the Court disbarred him.

Similarly, the attorney in In re Frost, 171 N.J. 308 (2002), failed to sustain his burden of proving that he reasonably believed that he was entitled to trust funds that he had taken. In that case, the attorney settled a products liability lawsuit and believed that he had obtained the consent of the workers' compensation carrier to compromise its lien. He, thus, sent a check to the carrier for the compromised amount. The carrier, however, returned the check, asserting that it had not agreed to reduce its lien. Frost claimed that, because he had tendered the funds to the carrier, and the carrier had rejected the tender, the funds belonged to his client. He then persuaded his client to lend him the funds.

The Court found that Frost knowingly misappropriated the carrier's funds. The Court noted that, as an escrow agent, Frost held the funds for the benefit of both his client and the carrier. He, therefore, needed the consent of both parties before he could borrow the funds. It was undisputed that Frost did not seek or obtain the carrier's consent to borrow the money. The Court rejected as not credible Frost's contention that he reasonably believed that, once the carrier rejected the tender, it no longer had an interest in the funds.

[Id. at 44-45.]

Here, respondent did not argue before the Pennsylvania disciplinary authorities that she had a reasonable belief of entitlement to the funds that she took as putative fees in the Ahern Estate and Elmer Estate matters. Rather, in her Pennsylvania disciplinary matter, she admitted that she was not

entitled to the $86,000 in fees, and could not successfully defend herself against the charges against her in that state.

Although the Pennsylvania authorities did not link respondent's conduct to specific rules, she was charged with that state's equivalent of New Jersey RPC 1.15(a) and RPC 8.4(c). In New Jersey, those two RPCs are typically charged when an attorney intentionally converts client funds for the attorney's own personal use, in this case contrived legal fees totaling $86,000. In New Jersey, such a taking constitutes knowing misappropriation. Thus, we conclude that, under the principles of In re Wilson, supra, 81 N.J. 451, and In re Hollendonner, supra, 102 N.J. 21, respondent must be disbarred.

Even in the absence of a knowing misappropriation finding, we would still recommend respondent's disbarment, when we view her actions alongside those of the attorney in In re Ort, supra, 134 N.J. 146, who was disbarred for overreaching.

In that case, in September 1989, Sophie Sawulak retained Ort to settle her late husband's estate, consisting of a farm in Hackettstown, New Jersey, a small pension, two $500 life insurance policies, stocks, and other assets, with a combined value of approximately $300,000. Sawulak had been separated from her husband for three years before his death and resided in Buffalo, New York, with her sister. The retainer agreement that

she signed with Ort called for a minimum legal fee of six percent of the gross estate. References to hourly rates and itemized bills had been deleted from the form that Ort used to draft the agreement. Id. at 148-149.

Ort claimed to have sent Sawulak a letter stating that his hourly rate "is between $115. [sic] and $135. [sic] depending on responsibility." The client testified that she never received such a letter. Ibid.

Early in the representation, Ort asked Sawulak for permission to obtain a $25,000 home equity loan on the farm property, but she explicitly denied that request three times. Id. at 150. When, in February 1990, Sawulak sought to sell the farm "as is," Ort informed her that she could not do so without settling title to the property, which would cost an additional $25,000 and take a year to complete. Sawulak also sought an accounting of all legal fees and expenses for work performed from the September 1989 retention through February 1990, as Ort had sent her correspondence to the effect that an "[a]ppraisal, search, bank, accounting and legal fees" totaled $10,558.32. Id. at 151. Ort replied only that his minimum fee would be $18,000, and that he would send her itemized statements when that amount was exceeded. He did not disclose to her that, by that time, he

had already paid himself $20,000 from the estate account. Id. at 151.

Rather than permit Ort to charge an additional $25,000 to settle title to the Hackettstown property, Sawulak terminated the representation and retained a new attorney. During litigation initiated by her new lawyer, Sawulak discovered that Ort had charged what appeared to be excessive fees by both inflated time entries and by unnecessary charges, including forty visits to "check" on the farm, some of which occurred after Sawulak told him to stop visiting the property. Sawulak also learned that Ort had paid himself $32,202.34 in legal fees, from estate funds, without her authorization or consent. Moreover, despite Sawulak's refusal, three times, to permit a mortgage on the property, she learned that Ort had obtained a $25,000 home equity loan, much of which he used to pay himself legal fees. Id. at 152-153.

Ort was found to have created time entries, prior to the disciplinary hearing, in an effort to justify his "outrageous" $32,000 fee. He also drafted letters setting forth his hourly rate and either never sent them to the client, or, "more likely, created [them] in anticipation of the disciplinary proceeding and/or the civil action." Id. at 155.

We determined that Ort failed to abide by the client's decisions regarding the scope of the representation; failed to communicate with the client; charged an unreasonable fee; failed to set forth the basis or rate of his fee in writing; and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. We also found that he had engaged in conduct prejudicial to the administration of justice. Four members voted for a three-year suspension, and two members voted for disbarment. Id. at 154-155.

The Court determined to disbar respondent, noting:

> In this matter, not only were respondent's time charges excessive, but respondent obtained without authorization estate funds with which to pay his inflated fees, and also established a single-signature estate bank account enabling him to sign estate checks without client authorization in payment of his own invoices. Respondent's entire course of conduct in respect of his compensation for services from this estate was blatantly improper and unethical.
>
> [Id. at 161.]

The Court found that Ort's time charges were a "flagrant breach of the attorney-client relationship" and that the only appropriate sanction for Ort's having taken such "unfair and improper advantage of his client for his own benefit," was disbarment. Id. at 160-161.

A comparison of Ort's and respondent's misconduct, reveals the following similarities: (1) Ort maintained an estate account

over which he had sole control, while respondent obtained signed blank checks from the executors of two estates, essentially giving her unqualified access to the estate funds; (2) both Ort and respondent kept their clients in the dark about their actions by failing to provide them with requested billing invoices; (3) Ort took a $32,000 fee in a small, uncomplicated estate matter, while respondent took almost $86,000 from two estates, for very little work performed; (4) Ort fabricated time sheets to hide his overreaching, while respondent fabricated invoices in the Peszko matter to hide improprieties there; and (5) Ort lied to the District Ethics Committee and to us about his time sheets, while respondent lied in District Court about the Peszko invoices, fabricated a fee agreement, forged Peszko's signature to it, and then also used the fabricated document during the Pennsylvania disciplinary proceedings.

Although respondent's misconduct essentially mirrors that of the attorney in Ort, in one respect it is more serious: respondent took greater sums from her clients than did Ort.

In summary, even without considering respondent's knowing misappropriation in this case, we would recommend her disbarment for her egregious overreaching and subsequent fraudulent acts, designed to hide her misconduct and deflect blame from herself. We conclude, however, that respondent knowingly misappropriated

almost $86,000 of client funds from two estates. Thus, under Wilson and Hollendonner, supra, she must be disbarred.

Vice-Chair Baugh did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
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 Kristi A. Fredericks
Docket No. DRB 16-136

Argued: November 17, 2016

Decided: January 30, 2017

Disposition: Disbar

Members	Disbar	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