

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-319
District Docket Nos. XIV-2014-0684E
and XIV-2015-0412E

IN THE MATTER OF :
JEFFREY M. ADAMS :
AN ATTORNEY AT LAW :
:

Decision

Decided: May 4, 2017

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

This matter was before us on a certification of default filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). A seven-count complaint charged respondent with knowing misappropriation of trust and/or escrow funds (RPC 1.15(a)), In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1984)); failure to safeguard client or third party funds (RPC 1.15(a)); failure to promptly return client or third party funds (RPC 1.15(b)); practicing law while ineligible (RPC 5.5(a)(1)); making a false statement to ethics authorities (RPC 8.1(a)); failure to cooperate with an ethics

investigation (RPC 8.1(b)); engaging in a criminal act; specifically the theft and/or misapplication of entrusted funds (RPC 8.4(b)); conduct involving dishonesty, fraud, deceit or misrepresentation (RPC 8.4(c)); and failure to file a R. 1:20-20 affidavit following a temporary suspension (RPC 8.4(d)).

We recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1990. On November 25, 2014, he received an admonition for his failure, in an early 2012 matter, to cooperate with an ethics investigation. In the Matter of Jeffrey M. Adams, DRB 14-243 (November 25, 2014).

Effective May 1, 2015, the Court suspended respondent for his failure to pay disciplinary costs associated with the matter for which he received an admonition. In re Adams, 221 N.J. 291 (2015). He was again temporarily suspended on July 1, 2015, for failure to cooperate with the OAE investigation into the alleged misconduct in the present matter. In re Adams, 222 N.J. 11 (2015).

On September 30, 2013, respondent was declared ineligible to practice law, for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (CPF). He never regained eligibility to practice law.

Respondent remains suspended to date.

Service of process was proper in this matter. On July 27, 2016, the OAE sent a copy of the complaint, by both certified and regular mail, in accordance with R. 1:20-4(d) and R. 1:20-7(h), to respondent's home address as listed in the attorney registration system. The certified mail, the regular mail, and the certified mail return receipt were not returned.

On August 26, 2016, the DEC sent respondent a "five-day" letter at his home address, by certified and regular mail, notifying him that, unless he filed an answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record in the matter would be certified directly to us for imposition of a sanction, and the letter would serve as an amendment to the complaint to charge respondent with a violation of RPC 8.1(b) for his failure to file an answer. The certified mail, regular mail, and the certified mail return receipt were not returned.

As of September 7, 2016, the date of the certification of the record, respondent had not filed an answer.

I. The Knowing Misappropriation Charges

During the relevant time, respondent maintained three accounts with TD Bank: an attorney trust account (ATA); a

primary business account (PBA); and an infrequently used, secondary business account (SBA).

As the result of a December 3, 2014 overdraft notice from TD Bank, the OAE docketed the matter for investigation.

A. The Slosky/Calico Lane Matter (Count Four)

In early 2014, respondent represented the buyer, Valerie Slosky, in her purchase of 1771 Calico Lane, Toms River, New Jersey, from Theresa Pignataro. Respondent served as the settlement agent for the transaction. Elizabeth A. Bolster, Esq., represented Pignataro.

The closing took place on April 11, 2014. As part of his duties as closing agent, respondent certified that the HUD-1 settlement statement, which he prepared, was a true and accurate account of the transaction, and that he disbursed or would disburse the closing proceeds in accordance with it.

On March 21, 2014, prior to depositing any funds into the ATA on account of the matter, and twenty-three days prior to closing, respondent issued to himself ATA check #3596, in the amount of \$1,275, and added the annotation: "Brenson/Slosky, 1771 Calico Lane." Respondent deposited that check into his PBA on March 21, 2014, and then made disbursements from that

account until only \$177.51 remained, on March 31, 2014. The balance in the SBA was \$171.79 at the time.

According to the OAE's forensic reconstruction of respondent's trust account, as of March 21, 2014, the date respondent took the \$1,275, he should have been holding \$26,137.59 in the ATA for thirty-nine client matters. The account, however, contained only \$10,176.25, reflecting a shortage of \$15,961.34.

The OAE also discovered discrepancies between the disbursements listed on the HUD-1 and respondent's actual disbursements, as follows: Line 1102 listed attorney fees as \$750, but respondent issued ATA check #3609 for \$1,610, or \$860 more than the \$750 listed; Line 1201 showed a recording fee of \$400, but the actual recording fee was \$250, evidenced by ATA check #3606; Line 1202 listed a release fee of \$75, but there was no disbursement for a release fee; and Line 1305 listed a wire fee of \$35, but no disbursement was made for such a fee.

According to the complaint, by the above actions, respondent disbursed to himself \$2,135 (\$1,275 + 860), without the authorization of either the buyer or the seller. The unauthorized, excess legal fees (\$860) were not identified at Line 1102 of the HUD-1. Moreover, respondent failed to

reimburse the parties for excess recording, release, and wire transaction fees.

Respondent also collected \$2,144.81 for property taxes payable to Toms River Township (Line 904 of the HUD-1). According to tax records, Bank of America, the sellers' bank, paid those second-quarter 2014 taxes on April 16, 2014.

The OAE's review of respondent's ATA records revealed that respondent did not disburse the \$2,144.81 to taxing authorities or return those funds to the seller. According to the complaint, no party authorized respondent to use the escrowed tax funds other than to pay property taxes. The complaint, however, does not allege that respondent failed to retain those funds in escrow or that he converted them for another purpose.

The complaint alleged that respondent's actions constitute (1) knowing misappropriation of escrow funds; (2) failure to safeguard and/or return client or third party funds; (3) engaging in a criminal act (theft and/or misapplication of entrusted funds); and (4) conduct involving dishonesty, fraud, deceit or misrepresentation.

B. The Zeller/Michael Street Matter (Count Five)

Respondent represented Lawrence Zeller in the sale of property located at 93 Michael Street, Iselin, New Jersey, to

Deborah and Donald Smith. The buyers' attorney, Eric L. Lange, Esq., acted as settlement agent for the transaction, which closed on July 31, 2014.

On June 23, 2014, respondent deposited into the ATA the buyers' \$9,000 down payment for their purchase. Twenty-three days prior to closing, on July 9, 2014, respondent issued to himself ATA check #3614, for \$700, and referenced "Zeller/Smith" for "fees/costs." Respondent withdrew \$500 of that amount in cash, and deposited the remaining \$200 into his PBA. The buyers' attorney informed the OAE that his clients had not authorized respondent to use the escrowed down payment funds.

On July 9, 2014, respondent should have been holding \$35,407.40 in the ATA for forty-one client matters, but the balance in that account was only \$16,071.06, representing a shortage of \$19,336.34.

On July 31, 2014, the closing date, respondent disbursed ATA check #3615, for \$9,000, to his client, the seller. According to the complaint, by disbursing \$700 of escrow funds to himself without the authorization of the parties, any client, or third party, respondent knowingly misappropriated those funds; failed to safeguard and/or promptly return client

or third party funds; and engaged in a criminal act, that is, the theft and/or misapplication of entrusted funds.

C. The Halfinger/Maple Avenue Matter (Count Seven)

Respondent represented Lauren and Margaret Halfinger in connection with their purchase of property located at 200 Maple Avenue, Toms River, from Jennifer Martino, who was represented by Hunt A. Parry, Esq. Although the complaint did not state that respondent acted as settlement agent, the HUD-1 for the transaction listed him as such. Moreover, respondent signed the HUD-1 as settlement agent for the transaction, which closed on December 19, 2014.

Between August and October 2014, and before respondent deposited any funds into the ATA for the transaction, he drafted six ATA checks, all made payable to himself, referencing the Halfinger matter, and containing memo section references to "fees" or "fees/costs." Those checks are as follows: on August 26, 2014, check #3616, for \$850; on September 8, 2014, check #3617, for \$875; on September 12, 2014, check #3618, for \$425; on October 8, 2014, check #3621, for \$1,300; on October 20, 2014, check #3626, for \$250; and on October 28, 2014, check #3627, for \$300.

Respondent deposited the above six checks, totaling \$4,000, into the PBA, which had a balance of only \$221.06 at the time. He then drew down on those funds, converting them to his own personal use.

The HUD-1 listed respondent's attorney fee, at Line 1109, in the amount of \$2,325. He actually disbursed ATA check #3681 to himself, for "fees/costs," in the amount of \$2,505, representing an unauthorized overdisbursement of \$180.

Line 1202 of the HUD-1 listed a recording fee of \$150, but respondent disbursed only \$70 on account of the recording fee. Moreover, respondent made no disbursement on account of a release fee, although he had listed one in the amount of \$100. Respondent did not remit the total \$180 (\$80 plus \$100) difference to the appropriate parties.

According to the complaint, respondent invaded other client funds held in the ATA when he took the \$4,000 in putative fees, and did so without authorization to use the funds. Moreover, the ATA held no personal funds belonging to respondent when he took the \$4,000. Thus, he invaded the funds of other clients or third parties.

Specifically, on October 28, 2014, when respondent deposited the last of the six ATA checks (#3727 for \$300) into his PBA, he should have been holding \$26,407.40 on account of

forty client matters. Yet, the ATA was almost depleted, containing just \$221.06.

No client or third party authorized respondent's use of funds held in the trust account. Respondent's invasion of other clients' funds required to be held in the ATA, as well as his failure to remit to his clients or third parties the difference between estimated and actual fees, constituted (1) knowing misappropriation of escrow funds; (2) failure to safeguard and/or return client or third party funds; (3) a criminal act: theft and/or misapplication of entrusted funds; and (4) conduct involving dishonesty, fraud, deceit or misrepresentation.

D. The Kim/East Edgebrook Drive Matter (Count Six)

Respondent represented Arthur and Nancy Kim in their purchase of property located at 1028 East Edgebrook Drive, Toms River, from Patrick Catapano. The seller was represented by Richard Mazzei, Esq.

Respondent acted as settlement agent for the closing of title, which took place on November 24, 2014. On November 21, 2014, three days prior to the closing, respondent issued ATA check #3628, for \$2,650, payable to himself, with the notation "fees/costs." Respondent deposited that check into his PBA, which held only \$10.50 at the time. On that same date,

respondent's ATA held \$33,371.06, when he should have been holding \$62,207.40 in connection with forty-three client matters, representing a shortage of \$28,836.34.

According to Lines 1109 and 1110 of the HUD-1, the parties authorized respondent's legal fee in the amount of \$1,325. Nevertheless, respondent paid himself \$2,650, \$1,325 in excess of the authorized amount, three days prior to closing. He did so without the authorization of the parties, any client, or any third party.

During the OAE's investigation, respondent provided his ledger card for the transaction, but it failed to list the \$2,650 ATA check #3628. The complaint alleged that "respondent maintained his ledger card in a manner inconsistent with the actual trust transactions and inconsistent with the HUD-1 Settlement Statement, in order to conceal the actual unauthorized disbursement of funds to himself."

The HUD-1 and actual disbursements differed in other ways as well. Although Line 1202 reflected a recording fee of \$90, respondent disbursed only \$80 for that purpose, by ATA check #3634. Line 1303 listed fourth-quarter taxes of \$33.14, but respondent failed to disburse those funds to Berkeley Township. Respondent also failed to remit the difference between HUD-1

disbursements and the actual disbursements "back to the client."

According to the complaint, respondent already had negative client ledger balances in the Zeller/Michael Street (\$700) and Halfinger/Maple Avenue (\$4,000) transactions when this matter, which had a negative balance of (\$2,650), closed.

By taking twice the amount (\$1,325 plus \$1,325 = \$2,650) to which respondent was entitled for his legal fee and by failing to remit to his clients or third parties the difference between actual and estimated fees, the complaint alleged, respondent (1) knowingly misappropriated escrow funds; (2) failed to safeguard and/or return client or third party funds; (3) engaged in a criminal act: theft and/or misapplication of entrusted funds; and (4) engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.

**II. THE UNAUTHORIZED PRACTICE OF LAW/LIE TO ETHICS AUTHORITIES
(Count Three)**

As previously stated, on September 30, 2013, respondent was declared ineligible to practice law for failure to pay the annual attorney assessment to the CPF.

On October 27, 2014, the Court entered an Order declaring respondent administratively ineligible to practice law for

failure to comply with the mandates of R. 1:28A-2 and the IOLTA program.

During respondent's period of ineligibility, between April 11, 2014 and December 19, 2014, he represented clients in the Slosky/Calico Lane matter, the Zeller/Michael Street matter, the Halfinger/Maple Avenue matter, and the Kim/East Edgebrook Drive matter.

In a January 14, 2015 reply to the OAE grievance, respondent stated that he had contacted the CPF, and completed and returned the applicable forms with payment to satisfy his CPF obligations. The OAE contacted CPF personnel in February, March, and April 2015, and learned that respondent still had not paid his outstanding assessments.

The complaint alleged that, by continuing to practice law during a period of ineligibility and then misrepresenting to ethics authorities that he had become current with his annual CPF obligations, respondent was guilty of (1) practicing law while ineligible, (2) knowingly making a false statement to ethics authorities, and (3) conduct involving dishonesty, fraud, deceit or misrepresentation.

III. THE RULE 1:20-20 AND FAILURE TO COOPERATE CHARGES
(Counts One and Two)

As previously noted, respondent was temporarily suspended from the practice of law, effective May 1, 2015, for his failure to pay disciplinary costs associated with his November 25, 2014 admonition.

On July 1, 2015, respondent was again temporarily suspended, for failure to cooperate with the OAE's investigation in the present matter.

Rule 1:20-20 provides, among other things, that a suspended attorney must file an affidavit with the OAE, stating in correlatively numbered paragraphs, how he or she has complied with the requirements of the Rule. Respondent failed to file the compliance affidavit after either of the above suspensions.

By letters dated August 14, 2015 and January 29, 2016, the OAE urged respondent to file the compliance affidavit, but he did not do so. Based on his failure to comply with R. 1:20-20, the complaint charged respondent with having violated RPC 8.1(b) and RPC 8.4(d).

The complaint further alleged a separate violation of RPC 8.1(b) for respondent's failure to cooperate with the OAE's investigation into the overdraft in the ATA. To that end, on December 15, 2014, the OAE requested respondent's written reply

and supporting documents. As noted earlier, respondent provided the OAE with a January 14, 2015 written explanation of his actions.

Thereafter, the OAE scheduled a March 19, 2015 demand audit interview, but respondent failed to appear on the designated date. The OAE scheduled another demand audit interview for April 21, 2015, but respondent again failed to appear. On a date not identified in the complaint, the OAE investigator visited respondent's office location and determined that the office was no longer occupied.

On April 28, 2015, the OAE filed a petition for respondent's temporary suspension, to which respondent did not reply. On July 1, 2015, the Court entered an Order temporarily suspending respondent as a result of his failure to cooperate with the investigation into the overdraft matter.

Thereafter, on August 14, 2015, the OAE sent another letter to respondent requesting that he contact that office. Again, he failed to reply.

The complaint alleged that respondent's failure to cooperate with the OAE's investigation into the overdraft violated RPC 8.1(b).

The OAE seeks respondent's disbarment for the knowing misappropriation of client and escrow funds in the four real

estate matters - Slosky/Calico Lane, Zeller/Michael Street, Kim/East Edgebrook Drive, and Halfinger/Maple Avenue.

* * *

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

In the Slosky/Calico Lane matter, respondent took \$1,275 as a legal fee before any funds were deposited on account of that transaction. He did so without authorization from any party, and, in so doing, invaded other clients' funds. Thereafter, at the closing, respondent took a second legal fee in the amount of \$1,610, when the HUD-1 disclosed a total fee of only \$750. Thus, respondent knowingly misappropriated funds required to be held in the ATA on behalf of his clients.

The complaint also charged that respondent knowingly misappropriated \$2,144.81, representing funds escrowed for the payment of property taxes, which already had been paid by the sellers' bank a few days after the April 11, 2014 closing. Respondent was not authorized to use those escrow funds, other than to pay those taxes. The complaint, however, did not allege

or otherwise indicate that respondent converted those funds to his own use. They may have remained thereafter in the ATA.

We know, however, from elsewhere in the complaint, that by October 28, 2014, more than six months after the Calico Lane closing, the ATA contained only \$221.06, when it should have held \$2,144.81 on account of this transaction alone. The funds may have been negligently misappropriated, if they were misappropriated at all. Nevertheless, for lack of clear and convincing evidence, we dismiss the knowing misappropriation charge as it relates to the tax escrow.

In Zeller/Michael Street, respondent held the buyers' down payment, depositing the \$9,000 sum into the ATA. Then, twenty-three days prior to closing, respondent took a \$700 legal fee. He did so without the authorization of the buyer, the seller, or any other party, to utilize those escrow funds for the premature payment of his legal fee. Accordingly, respondent knowingly misappropriated \$700 in escrow funds.

In the Halfinger/Maple Avenue matter, between August and October 2014, and before he deposited any funds in the ATA on account of the transaction, respondent drafted six ATA checks to himself, totaling \$4,000, ostensibly on account of fees and costs, and deposited them into his PBA. He then converted those funds to his own use. Then, when respondent took his legal fee

pursuant to the closing, it exceeded the fee authorized on the HUD-1 by \$180. Respondent's conversion of \$4,180 to his own use, without authorization to do so, amounted to knowing misappropriation of client funds.

In the Kim/East Edgebrook Drive matter, three days prior to closing, and without the authority from any party to do so, respondent took a legal fee in the amount of \$2,650. According to the HUD-1 that respondent prepared, he was authorized to take a legal fee of only \$1,325. By taking double that amount prior to closing, without the parties' or other clients' authority to do so, respondent knowingly misappropriated \$1,325 of client or escrow funds held in the ATA.

There also were discrepancies between the amounts respondent listed for such items as recording fees, taxes, and the like, on his HUD-1s, and his actual disbursements. In those instances, respondent failed to notify the clients and parties to whom the funds belonged that he was holding those funds, and then failed to promptly remit the funds to the proper parties, violations of RPC 1.15(a) and RPC 1.15(b), respectively.

In addition, on September 30, 2013, respondent was declared ineligible to practice law for failure to pay the annual attorney assessment to the CPF. Yet, between August and December 2014, he represented the clients in all four of these

real estate matters. By practicing law while ineligible to do so, respondent violated RPC 5.5(a)(1).

When the OAE inquired about respondent's practice of law during his period of ineligibility, he lied, claiming in a letter to that office that he had already completed and returned the necessary forms to the CPF, along with his payment. In fact, he had not done so, as verified by the OAE through that office's later contact with the CPF. Respondent's false statement to the OAE amounted to a violation of RPC 8.1(a).

Respondent also was charged with having violated RPC 8.4(c) for the false statement to ethics authorities. Because that charge arises out of the same lie to ethics authorities, we determine it to be subsumed in our RPC 8.1(a) finding.

Respondent was temporarily suspended, effective May 1, 2015, for failing to pay disciplinary costs in his admonition matter. A second temporary suspension Order was entered on July 1, 2015, for respondent's failure to cooperate with the OAE's investigation into these matters. Thereafter, and despite letters from the OAE attempting to prod respondent into compliance, he knowingly failed to file the required R. 1:20-20 affidavit, a violation of RPC 8.1(b) and RPC 8.4(d).

Finally, although respondent filed a January 14, 2015 written reply to the OAE's grievance, he thereafter failed to appear at two scheduled demand audits and then defaulted on this complaint. Respondent's failure to cooperate with the OAE in its investigation violated RPC 8.1(b).

The complaint recites facts suggesting that respondent also may have violated RPC 8.1(b) by ignoring the OAE's April 2015 petition for his temporary suspension. However, we do not view a petition for temporary suspension as a "lawful demand for information from a . . . disciplinary authority." Therefore, it cannot form the basis of an RPC 8.1(b) finding, and we did not consider it when determining that respondent violated RPC 8.1(b).

Although the complaint also charged respondent with a violation of RPC 8.4(b) (commission of a criminal act) in each of the four real estate transactions, it does not recite any facts to support such a finding. Rather, the complaint alleges only that, by his misappropriation of funds, respondent engaged in theft and/or misapplication of entrusted funds, without citation to a particular statute. N.J.S.A. 2C:20-3 defines theft as the unlawful taking of property of another with the purpose of depriving him thereof. It may be that respondent intended only to borrow the funds. Such a state of mind will

not defeat a finding of knowing misappropriation, but it does operate to defeat an essential element of the offense of theft. Thus, because the complaint neither identifies violation of a specific criminal statute nor contains any facts on which to base a specific finding in that respect, we dismiss the RPC 8.4(b) charges.


In In re Goldstein, 167 N.J. 208 (2001), an attorney was disbarred for knowingly misappropriating client and escrow funds. In several of the transactions in that case, Goldstein's misconduct closely mirrored that of respondent. Similar to respondent, in three real estate matters, Goldstein improperly withdrew fees from his trust account before any corresponding settlement funds had been deposited in that account. In two matters, like respondent, Goldstein withdrew fees in excess of the amount owed him. Also like respondent, Goldstein used real estate deposits without his clients' consent, and the advance fees and excess fees invaded other clients' trust funds or escrow funds. Goldstein was disbarred. See also In re Skevin, 104 N.J. 486 (1986), cert. denied, 481 U.S. 1028 (1987) (attorney disbarred for taking legal fees and costs owed from the settlements of clients' cases before the settlement proceeds were received).

Under Wilson, supra, 81 N.J. 451 and Hollendonner, supra, 102 N.J. 21, respondent must be disbarred for his knowing misappropriation of client trust and escrow funds held in the ATA in the Slosky/Calico Lane, Zeller/Michael Street, Kim/East Edgebrook Drive, and Halfinger/Maple Avenue matters. We so recommend. Accordingly, we need not consider the appropriate quantum of discipline for respondent's other infractions.

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
Chief Counsel


SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Jeffrey M. Adams
Docket No. DRB 16-319

Decided: May 4, 2017

Disposition: Disbar

Members	Disbar	Recused	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