SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 16-437
District Docket No. XIV-2014-0545E

IN THE MATTER OF

PETER FLOYD ANDERSON, JR.

AN ATTORNEY AT LAW

Decision

Argued: March 16, 2017

Decided: June 23, 2017

Steven J. Zweig 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, following respondent's disbarment by the First Judicial Department of the Appellate Division of the Supreme Court of New York (New York Court). Respondent has not opposed the motion.

The New York Court disbarred respondent, pursuant to 22 NYCRR § 603.4(g) (now 22 NYCRR § 1240.9(b)). That rule permits imposition of the ultimate sanction on an attorney who fails to seek either a hearing or reinstatement within six months from the date of an order suspending the attorney, on an interim basis, during the pendency of an investigation or proceeding upon a finding that the attorney had "engaged in conduct immediately threatening the public interest." Here, respondent received an interim suspension based on his "substantial admission under oath" and "uncontested evidence" that he had committed acts of professional misconduct that immediately threatened the public interest. The conduct comprised misappropriation and/or conversion of third-party funds, improper ATM cash withdrawals from his attorney trust account, and commingling of personal funds with client funds.

For the reasons set forth below, we determined to grant the OAE's motion and to recommend respondent's disbarment for the knowing misappropriation of escrow funds.

Respondent was admitted to the West Virginia bar in 1973, the New York bar in 1982, and the New Jersey bar in 1983. At the relevant times, he maintained an office for the practice of law in the Bronx.

Although respondent has no history of discipline in New Jersey, on September 12, 2016, his license to practice law was

revoked, due to nonpayment of the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection for seven or more consecutive years. R. 1:28-2(c).[1]

On June 30, 2015, the State of New York disbarred respondent. He did not report the disbarment to the OAE. The record does not reflect whether respondent reported his disbarment to the West Virginia ethics authorities or whether he was disciplined by that jurisdiction.

In September 2013, the Departmental Disciplinary Committee for the First Judicial Department in the County of New York (Committee) received a grievance from Frank Tehrani, whose company, Viewmont Builders Corp., was the buyer in an aborted real estate transaction. In short, Tehrani alleged that, after the transaction had failed, respondent did not refund his $65,000 down payment. The Committee opened an investigation into respondent's conduct.

In his reply to the grievance, respondent explained that he had become involved in the transaction when Ronald Fraser, a former client, asked him to represent Yvonne Victory in the sale of her Brooklyn property. In October 2012, Victory and Tehrani executed a

[1] The September 2016 revocation of respondent's law license does not preclude our exercise of jurisdiction over this matter because the conduct at issue took place between October 2010 and December 2013, which was prior to the effective date of the Court's Order of revocation. R. 1:20-2(c).

contract of sale, which reflected a $130,000 purchase price and a $65,000 down payment, which was to be held in escrow by respondent, as the seller's attorney.

Respondent deposited the funds in his attorney escrow account. "Thereafter," Fraser directed respondent to disburse $64,000 to him, claiming that it represented a "finder's fee." Respondent complied, by issuing two certified escrow account checks, totaling $60,000, and withdrawing $4,000 in cash from the same account. He retained the remaining $1,000 as his legal fee for the closing.

According to respondent, Fraser was adamant that the $65,000 represented a finder's fee. The New York Court noted, however, that the contract of sale makes no reference to a finder's fee. Moreover, the contract of sale identifies the $65,000 as a down payment.

Due to title issues, the sale never closed. When Tehrani demanded the return of his $65,000 down payment, respondent informed Fraser and "advised" him to contact Tehrani. Fraser did not return the funds, and respondent has been unable to recover them from him.

On April 22, 2014, the Committee examined respondent under oath. Respondent admitted that he had neither requested permission "from the client or his counsel" to disburse the $65,000 down payment nor informed them that he had done so.

In addition to respondent's disbursement of the down payment to Fraser, the New York Court found that his bank records and testimony established "other escrow related misconduct." Specifically, between September 2010 and December 2013, respondent made approximately 200 ATM cash withdrawals from his escrow account, in varying amounts, totaling approximately $47,000. Respondent did not dispute the accuracy of the bank records. Respondent also admitted leaving earned legal fees in his escrow account and having more than $200,000 in outstanding tax liens against him.

Based on respondent's testimony and the escrow account records, the New York Court found that "the record presents evidence that respondent misappropriated and/or converted third-party funds, improperly made repeated ATM cash withdrawals from his escrow account, and commingled personal funds with client funds while $200,000 in tax liens loomed over any funds that he maintained outside of his escrow account." In the New York Court's view, "[s]uch conduct constitutes professional misconduct that immediately threatens the public interest, thereby warranting his immediate suspension from the practice of law," pursuant to 22 NYCRR 603.4(e)(1)(ii) and (iii), effective October 7, 2014, and until further order of the court.

By June 30, 2015, more than six months had passed since the New York Court's October 2014 order of suspension. During that time, respondent did not seek either a hearing or reinstatement. Accordingly, pursuant to 22 NYCRR 603.4(g), he was disbarred.

A review of the other documents in the record places respondent's actions in greater context. Specifically, the real estate transaction did not proceed in the normal course. Instead, as respondent stated in his October 13, 2013 reply to Tehrani's grievance, the content of which he had affirmed during his examination under oath, he first learned of Victory and her decision to sell the property to Tehrani on October 23, 2012, just before the contract of sale was executed.

On October 23, 2012, Fraser[2] called respondent, stated that he and his associate, "David," were on their way to "a real estate matter," and asked respondent to meet them at Tehrani's lawyer's office. When respondent arrived at the office, Fraser was already there, with Victory, whom he had transported to the office. Fraser explained to respondent that the matter was a short sale and that he wanted respondent to represent Victory in the execution of the

[2] Respondent previously represented Fraser in a criminal assault matter, his wife in a foreclosure matter, and both of them in a bankruptcy case.

contract. He introduced respondent to Victory as "the guy who's going to be representing you."

Respondent's understanding of the nature of the $65,000 received from Tehrani, upon the parties execution of the contract, is inconsistent. In his written reply to Tehrani's grievance, respondent stated that Fraser had informed him, at the time the parties signed the contract, that the down payment was a finder's fee to Fraser for "getting the deal" for Tehrani. At respondent's examination under oath, however, he testified:

> MR. DOYLE:[3] Okay. Now, does the sales contract anywhere reference a finder's fee?
>
> THE WITNESS: No.
>
> MR. DOYLE: Okay. And, in fact, doesn't the sales contract repeatedly use the term "downpayment?"
>
> THE WITNESS: Sure, it does.
>
> Mr. DOYLE: And doesn't it describe the $65,000 —
>
> THE WITNESS: As a downpayment.
>
> MR. DOYLE: It does describe it as a down payment.
>
> THE WITNESS: Yes, sir.
>
> MR. DOYLE: And, in fact, you testified a few moments ago that when you argued with Mr. Frazier [sic] you referred to it as a

[3] Kevin Doyle, Esq., was the Committee's investigator.

downpayment and he referred to it as a downpayment, correct?

THE WITNESS: Yes, I did.

Mr. DOYLE: And he did.

THE WITNESS: Yes.

MR. DOYLE: Okay.

THE WITNESS: No, he referred to it as a finder's fee.

MR. DOYLE: No, no, no, no, no. One moment. Go back. I'm talking -- you just described that at the sales contract signing you challenged him on it being such a large downpayment. And you both referred to it as a downpayment, didn't you?

THE WITNESS: No, I did. He did not. I said this is large. This is exactly how I said it. This is large. And he said I'll talk about it.

MR. DOYLE: Did he tell you it was not a down payment?

THE WITNESS: He didn't say one way or the other. I assumed it was a down payment.

MR. DOYLE: In any event —

THE WITNESS: That's what it says and that's what I took it to mean.

MR. DOYLE: Okay, you believed it was a downpayment.

THE WITNESS: Yes, sir.

MR. DOYLE: Okay. You read the sales contract, correct?

THE WITNESS: Yes.

MR. DOYLE: And that's your name at the bottom of the sales contract?

THE WITNESS: Yes.

MR. DOYLE: And you printed in your name, correct?

THE WITNESS: Yeah, sure.

MR. DOYLE: And that's your client's signature above that.

THE WITNESS: Yes.

MR. DOYLE: And again, is there even a hint of reference to a finder's fee?

THE WITNESS: No, there's not a hint of reference, not in this contract.

MR. DOYLE: Well, I just want to — I'm going to give you a chance to explain anything you want about any of these cases at the end of this. But for a moment I just want to focus on this, what I'll call a problem. You took what you understood to be a $65,000 down payment and you put it in escrow —

THE WITNESS: Yes, sir.

MR. DOYLE: -- and then you gave it to somebody who told you it was a finder's fee.

THE WITNESS: Yes.

[Ex.C97-11 to Ex.C100-12.]

Based on the above, it is clear that, at the time the parties executed the contract of sale and respondent received Tehrani's $65,000, in his capacity as the seller's attorney, he understood

the funds to be a down payment and that they were to be deposited and maintained in his attorney escrow account.

Respondent received the $65,000 in the form of two cashier's checks, payable to him, in the amount of $1,000 and $64,000. He deposited the checks in his attorney escrow account two days later, on October 25, 2012. On the same day, he withdrew $64,000, at Fraser's direction. Respondent complied with Fraser's instruction that he obtain two bank checks, totaling $60,000, payable to Agatron Realty, LLC ($50,000) and Kennedy Funding ($10,000), and to disburse $4,000 to Fraser.[4] Those parties had no involvement with the Victory-to-Tehrani transaction.

Respondent did not obtain permission from Tehrani to disburse the funds and did not inform Tehrani that he had done so, due to what respondent described as "stupidity" and "a big mistake" and the fact that the request for the fee "caught [him] off guard."

Presumably, respondent also did not obtain Victory's consent to the distribution either.

On December 14, 2012, Tehrani's lawyer demanded the return of his client's $65,000 down payment, based on the results of the title report, which had demonstrated that the property was uninsurable. Because respondent no longer had the funds, he

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[4] In his October 13, 2013 letter to the Committee, respondent mistakenly stated that the checks totaled $61,000.

contacted Fraser, notified him of the demand, and asked him to "straighten out this matter." Although Fraser repeatedly assured respondent that he would return the money to Tehrani, he never did so.

In respect of his attorney escrow account, respondent admitted that, between September 2010 through "about Christmas 2013," he made 202 ATM withdrawals, totaling $47,000, as reflected in bank records.

In addition, respondent acknowledged that the government held a lien against him for more than $200,000, and that he was paying $100 per month, pursuant to an agreement with the government. He admitted that he had retained earned legal fees in the account, which he also used as a checking account. Respondent further testified that "sometimes" he forgets that the account is holding the funds. If he has no need for the funds, he simply leaves them in the account, but claimed that he was "not trying to hide anything from anyone."

* * *

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
>
> (E) the unethical conduct established warrants substantially different discipline.

None of the exceptions in this rule warrant a deviation from the discipline imposed on respondent by New York.

"[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).

Prior to undertaking an analysis of the facts, we acknowledge that New York did not disbar respondent for knowingly misappropriating escrow funds or for his other unethical conduct. Rather, he was disbarred on procedural grounds, that is, his failure to seek relief from what amounts to a temporary suspension, by requesting either a hearing before the Committee or reinstatement by the New York Court. As seen below, however, although respondent was disbarred, based not on a fully-developed record at a disciplinary hearing, we granted the motion for reciprocal discipline, nevertheless, based on his admissions, and recommend his disbarment.

The record establishes that respondent represented Victory in the sale of a Brooklyn property to a company owned by Tehrani. Respondent's former client, Fraser, arranged for that representation. The October 23, 2012 contract of sale identified the $65,000 as a "Downpayment," and expressly stated that Tehrani's $65,000 deposit was to be held, in escrow, by respondent, as counsel for Victory. The contract mentioned neither a finder's fee nor Fraser, who was not a party to the contract.

In spite of respondent's vacillation during his examination under oath, there can be no doubt that he understood the $65,000 to be a down payment, that he was required to maintain those funds in his attorney escrow account, and that he "stupidly" disbursed the

monies to Fraser, without seeking permission from Tehrani, the buyer, or his client, the seller. We surmise that these salient facts formed the basis of respondent's apparent decision to allow New York's interim suspension to stand and to forego opposition to the OAE's motion for reciprocal discipline now before us.

In In re Wilson, 81 N.J. 451, 455 n.1 (1979), the Court described knowing misappropriation 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.

Six years later, the Court elaborated:

> The misappropriation that will trigger automatic disbarment under *In re Wilson,* 81 *N.J.* 451 (1979), disbarment that is "almost invariable," *id.* at 453, 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 is 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. To the extent that the language of the DRB or the District Ethics Committee suggests that some kind of intent to defraud or something else is required, that is not so. To the extent that it suggests that these varied circumstances might be sufficiently mitigating to warrant a sanction less than disbarment where knowing misappropriation is involved, that is not so either. The presence of "good character and fitness," the absence of "dishonesty, venality, or immorality" – all are irrelevant. While this Court indicated that disbarment for knowing misappropriation shall be "almost invariable," the fact is that since *Wilson*, it has been invariable.
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> [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 took client funds, knowing that the client had not authorized him or her to do so, and used them. This same principle also applies to other funds that an attorney is to hold inviolate, such as escrow funds. In re Hollendonner, 102 N.J. 21 (1985).

In Hollendonner, the attorney, who was a member of the Elks Lodge in Trenton, represented the lodge in negotiations with the buyer of its property. Id. at 22. The attorney accepted a $2,000 check from the buyer's attorney, which was to be held in escrow pending completion of the agreement of sale. Ibid.

At the time the attorney received the deposit, he wanted to buy a used car, but did not have sufficient funds. Ibid. He asked the lodge's officers for permission to take the deposit monies as

his fee, to which they agreed. Ibid. The attorney knew that escrow funds were subject to the sales contract and that they could not be released without the consent of both parties. Ibid. However, in this particular matter, the attorney did not anticipate any problems with the transaction, and he considered the deposit non-refundable. Ibid. He bought a car, and used the remaining funds for his personal benefit. Id. at 23.

In its analysis of the facts, the Supreme Court noted that, when the parties to a transaction select the attorney for one of them to hold the deposit monies, the attorney receives those funds as an agent for both parties. Id. at 28. In this regard, the Court stated that there is an obvious "parallel between escrow funds and client funds." Thus, the Court announced, in the future, attorneys who knowingly misappropriated escrow funds would be disbarred. Id. at 28-29.

Hollendonner mandates respondent's disbarment. The rule is well established: an attorney who receives deposit monies to hold in escrow, pending an event, holds those monies on behalf of all parties to the transaction and may not release the funds either until the event takes place or until he or she obtains the consent of all parties to the transaction.

Here, respondent was obligated to hold the funds in escrow until the closing. He was not permitted to release the monies,

absent consent both from the buyer (Tehrani) and the seller (Victory). Instead, he chose to take the monies, certainly without Tehrani's knowledge or consent, and pay them to third parties, who had no connection with the transaction, based on the instruction of Fraser, who also was not a party to the contract of sale.

As to the other violations, R. 1:21-6(c)(2) prohibits "ATM or cash withdrawals from all attorney trust accounts." Respondent violated the Rule when he admittedly made 202 ATM withdrawals, totaling $47,000, from his attorney escrow account.

Finally, respondent agreed that he had commingled, in his escrow account, personal funds with client and other trust funds, which is prohibited by R. 1:21-6(a)(1). Although the New York Court found that respondent had used his attorney escrow account as a personal checking account, in order to avoid having his monies seized to satisfy a $200,000 lien, in our view, the record does not contain sufficient information to support that conclusion.

In summary, Hollendonner requires the disbarment of attorneys who knowingly misappropriate escrow funds, either for their own benefit or for the benefit of another, for a good purpose or for a bad purpose, with or without the intent to defraud, and with or without the intent to make restitution. In re Hollendonner, supra, 102 N.J. 21. Respondent knowingly misappropriated the $65,000 down payment for the Victory-to-Tehrani transaction when, without the

permission of Victory and Tehrani, he retained $1,000 for himself and disbursed $64,000 to third parties, upon the direction of Fraser, who was not a party to the contract and who had not established any proof of entitlement to the funds. Thus, we recommend to the Court that respondent be disbarred.

Based on our disbarment recommendation, we need not consider the appropriate quantum of discipline for respondent's other ethics infractions.

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 Peter F. Anderson, Jr.
Docket No. DRB 16-437

Argued: March 16, 2017

Decided: June 23, 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:	9		

Ellen A. Brodsky
Chief Counsel