SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-026
District Docket No. XIV-2015-0352E

IN THE MATTER OF

BRYNEE KYONNE BAYLOR

AN ATTORNEY AT LAW

Decision

Argued: April 20, 2017

Decided: July 12, 2017

Reid Adler appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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), following respondent's consent to disbarment in both Maryland and the District of Columbia, effective June 5 and July 30, 2015, respectively. As set forth below, respondent's conduct violated the equivalents of New Jersey RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 (1979) (knowing misappropriation of client funds), and RPC 8.4(c) (conduct

involving dishonesty, fraud, deceit or misrepresentation). Respondent failed to notify the OAE of her disbarments in Maryland and the District of Columbia, as required by R. 1:20-14(a)(1).

The OAE recommends respondent's disbarment. Respondent's sole submission to us in this matter was her oral argument form, wherein she waived her right to appear and stated, "I voluntarily surrender my license without any admission of wrongdoing or guilt. There has been no conviction. My case is pending."

For the reasons set forth below, we find that respondent knowingly misappropriated client funds and, thus, we determine to grant the OAE's motion for reciprocal discipline and recommend her disbarment.

Respondent earned admission to both the New Jersey and Maryland bars in 2000, and the District of Columbia bar in 2001. She has no history of discipline in New Jersey, but has been ineligible to practice law in our jurisdiction since September 26, 2011, due to her failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection. During the relevant time frame, she was a principal in the firm of Baylor & Jackson PLLC, in Washington, D.C.

We glean the facts in this case from both the August 26, 2013 opinion of the United States District Court for the District of Columbia (DCO), filed in connection with a United States Securities and Exchange Commission (SEC) lawsuit against respondent and others, and the June 5, 2015 Joint Petition for Disbarment By Consent filed with Maryland disciplinary authorities.

In spring 2010, respondent was introduced to a man calling himself "Frank Lorenzo," who was the managing director of the Milan Group, Inc. (Milan), which purported to be a financial investment corporation. "Frank Lorenzo" was actually Frank Pavlico (Pavlico), a felon who had been convicted, in federal court, of laundering the profits of a marijuana-trafficking enterprise. In May 2010, respondent began representing both Pavlico and Milan, and agreed to act as their escrow agent for certain investment transactions. From August 2010 through September 2011, between $1.9 and $2.665 million was deposited into respondent's attorney trust account on behalf of Milan's "investors."

On or about November 15, 2011, respondent terminated her representation of both Pavlico and Milan. On November 30, 2011, approximately two weeks later, the SEC filed a civil action against Pavlico, Milan, respondent, her law firm, and others, in

connection with the investment transactions for which respondent had represented Pavlico/Milan and had served as escrow agent. Specifically, the SEC had determined that all of the investment transactions were part of a "Prime Bank" scheme that had defrauded at least thirteen investors of $2.665 million.[1]

The SEC concluded that Pavlico and respondent had "lured investors into the scheme by offering extraordinary returns ranging from 180% to 2400% per year at little or no risk." Respondent claimed that she had no knowledge of "Prime Bank" schemes prior to the SEC's commencement of the civil action. The SEC countered, however, that respondent was an active participant who, leveraging her status as an attorney, made material misrepresentations to investors regarding the fake investment opportunity, to provide "an aura of legitimacy" to the ruse. Specifically, respondent repeatedly offered validation of the transactions to potential "investors," claiming that she

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[1] According to the SEC, "Prime Bank" schemes claim that investors' funds will be used to purchase and trade "prime bank" financial instruments on clandestine overseas markets, generating huge returns in which the investor will share. In reality, neither these instruments, nor the markets on which they allegedly trade, exist. To give the scheme an air of legitimacy, the promoters frequently tell potential investors that they have special access to programs that otherwise would be reserved for top financiers on Wall Street, or in London, Geneva, or other world financial centers. Investors are also told that profits of 100% or more are possible with little or no risk.

had personally "verified" them, despite never having seen Milan complete a single financial transaction in which "investors" received the promised return on their funds, or even recouped their initial investment. Additionally, respondent misrepresented to potential "investors" that she had known Pavlico for years and had seen him make successful investments, that all investors' funds would remain, inviolate, in escrow in her attorney trust account, and that she and Pavlico were "working in the best interests of the investors."[2]

Perhaps the most damaging evidence against respondent was a telephonic exchange she had with parties whom she believed were potential investors, but who were actually undercover agents with the Federal Bureau of Investigation:

> RESPONDENT: Right. Absolutely. Absolutely. He actually **he just completed a transaction very similar to that and a wire is supposed to be sent out today to my escrow for the, for the, participants in a trade very very similar.** Basically the trades that he is working with he actually [garbled] is finding [garbled] they are project funding transactions and so they are inter-banking transactions that are going on. What happens is they leverage the one million dollars to obtain certain debt from one bank and sell them to another bank and this goes on and on

[2] On December 11, 2012, after being released from federal custody in connection with wire fraud charges stemming from this same "Prime Bank" scheme, Frank Pavlico committed suicide (DCO5-6,FN3).

repeatedly throughout the day for about 30 days and at the end a tremendous amount of money is made and a very high upside is in place for the actual trader. **And this of course is international and so it is not subject to federal laws or governance,** however at the end of the 30 days, the, the money has been, you know, used to leverage and trade and leverage and trade so greatly that the return is significantly higher. So that's why they are able to do the 250 percent return on your funds. So that is what I understand. That's what I understand from Frank in terms of the deal. I did not have . . . I did not speak . . . He did tell me you'd be calling but we didn't speak specifically about what the transaction was, but that's generally how it works and so there are actually internationally licensed traders who are doing this and have relationships and contacts with different banks to buy and sell these debts . . . .

FBI 2: What's the risk associated with the investment?
RESPONDENT: Well, there is a question about that. I don't know that there is a risk. I'm not sure. Certain parties depending on where your money is domiciled now, they can either block your money and just use the money to trade off your blocked funds and **your money goes nowhere for a period of thirty days.** Or they have it in someone else's escrow account. It would not be mine, it would be another bank that they are trading out of. But again it is not supposed to even be moved. **Nobody spends that money, that money is escrowed the entire time.** That's my understanding. And any contract that you receive will dictate exactly how that will take place. Period. So if, if there is an escrow for it and possibly you would be sending to another bank account that would be going into a subaccount with the traders and he would have to be responsible for returning those funds.

> FBI 1: But you have been involved in these transactions, I guess, for some period of time and have seen . . . seen them successfully be completed, correct?
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> RESPONDENT: Yes I have. As a matter of fact, in fact, like I said the first, not the first, the one this month, that actually took place last month. The funds are actually in place now to be paid out. And so **I was just talking to the banker yesterday about a wire being sent** and actually the participant I guess he is standing in the shoes of you who is actually set to receive the wire. So we're actually completing one right now . . . .
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> FBI 1: And Frank was telling, telling me that all of the fees and the money that's earned by Frank and I'm sure the fees that are earned by you are all taken out of profits that, that when we invest a million dollars all of that goes into the investment.
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> RESPONDENT: Oh yeah. Anything else comes from your, from your profit. That is correct . . . .
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> [DCO20-23.]

The SEC's investigation concluded that the investments that Pavlico and respondent marketed were wholly fictitious, and that the "investor" funds that respondent escrowed were systematically misappropriated for Pavlico's and respondent's personal use. In the joint petition for her consent to disbarment, respondent admitted that her law firm received approximately $416,500 from these funds.

Specifically, the SEC asserted that "investors'" funds were stolen, as follows:

Respondent's law firm	$ 746,266
Milan/Pavlico	$1,318,734
Additional defendants	$ 600,000
Total	**$2,665,000**

Ultimately, the SEC filed a motion for summary judgment in the District Court, relying heavily on an expert report that James E. Byrne of the George Mason University School of Law prepared. Respondent and the other defendants in the suit did not contest this report in which Byrne concluded that the "investments" that Pavlico and respondent offered were "classic instances of Prime Bank or High Yield Investment Schemes" and that the transactions were "no more real that unicorns, offering a 'mythical return on a fictional instrument'." Despite respondent's arguments in opposition, the United States District Court granted the SEC's motion for summary judgment against her, emphasizing that she "offers no defense to [Byrnes's] opinion and conclusion but only claims her own ignorance and innocence."

Although respondent maintained that "she acted only as an attorney advising her client," the District Court concluded that respondent had gone "well beyond the role of advising attorney into active participation in the [fraudulent scheme]," which was "so obvious that [she] must have been aware of it." The District Court further noted that respondent was an experienced lawyer;

she was the principal of her own firm; she had accepted significant "legal fees" for her representation of Pavlico and Milan, despite never producing evidence of having billed them as clients; she had provided "investors" with "Attorney Attestation" letters, proclaiming the validity of the investments; and she did what Pavlico directed her to do "without ever exercising a modicum of lawyerly interest in the legal implications of their activities." Moreover, the Court opined that she had "encouraged others to invest in unregistered securities, aided and abetted Milan's fraud, and knowingly allowed investors' monies – placed for safekeeping in her firm's IOLTA account – to be dispersed [sic] to Milan and then back to her." The Court also emphasized that respondent often personally responded to inquiries from frustrated "investors," stalling them with misrepresentations such as "we are working to get this transaction closed," and "we have been very busy today on calls regarding the closing of a number of transactions." An e-mail she sent to a concerned "investor," the day before Pavlico was arrested and the SEC lawsuit against them was filed, asserted "the precise type of financial gobbledygook that Professor Byrne opined is a classic feature of Prime Bank Fraud":

> [T]he swift has been identified, but could not be delivered as of yet. It was coming from the Central Bank of Russia and has not arrived yet . . . The buyer has agreed to do

> a ledger to ledger and get this resolved by the morning so stones could ship and the deal close. This is the status. We are all excited that we a[re] moving to closing, but we are not there yet."
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> [DCO25,FN9.]

In conclusion, the District Court summarized respondent's misconduct:

> [Respondent's] attempt to use her role as an attorney as a shield [against the SEC's claims of fraudulent conduct] is particularly pernicious because, as an attorney, she was in a position to lead investors to believe that their money was safe. Investors retained [respondent's firm] to use the firm's trust account to "escrow" investor money. Each escrow agreement identified the investor(s) as a "client" of [respondent's firm]. In every instance, investor funds were immediately disbursed from the IOLTA account to Milan and [respondent's firm] for personal use . . . While [respondent] protests that the "fees" she received were paid only on authority of Frank Pavlico at Milan, she does not argue that she did not know that her firm's trust account was used as a revolving door to receive investors' money and pay it out to Milan/Pavlico and thence to her, despite her assurances to investors that their money was safe.
>
> [DCO27.]

* * *

Following a review of the full 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;
>
> (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.

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).

We adopt the findings set forth in both the opinion of the United States District Court for the District of Columbia and the Joint Petition for Disbarment By Consent filed with Maryland disciplinary authorities, and determine that respondent's conduct violated New Jersey RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 (1979) (knowing misappropriation of client funds), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent consented to disbarment in Maryland and the District of Columbia for, among other serious ethics improprieties, knowingly misappropriating her clients' funds, which she had promised to hold, inviolate, in her attorney trust account, pursuant to escrow agreements.

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

> Unless the context indicates otherwise, "misappropriation" as used in this opinion means any unauthorized use by the lawyer of clients' funds entrusted to him, including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom.
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> [In re Wilson, supra, 81 N.J. 455, n.1.]
> Six years later, the Court elaborated:

> The misappropriation that will trigger automatic disbarment that is "almost invariable" . . . consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking. It makes no difference whether the money was used for a good purpose or a bad purpose, for the benefit of the lawyer or for the benefit of others, or whether the lawyer intended to return the money when he took it, or whether in fact he ultimately did reimburse the client; nor does it matter that the pressures on the lawyer to take the money were great or minimal. The essence of Wilson is that the relative moral quality of the act, measured by these many circumstances that may surround both it and the attorney's state of mind is irrelevant: it is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment . . . . The presence of "good character and fitness," the absence of "dishonesty, venality or immorality" – all are irrelevant.
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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 used trust funds, knowing that they belonged to the client and knowing that the client had not authorized him or her to do so. This same principle also applies to other funds that the attorney is to hold inviolate, such as escrow funds. In re Hollendonner, 102 N.J. 21 (1985).

In Hollendonner, the Court extended the Wilson disbarment rule to cases involving the knowing misappropriation of escrow

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

As detailed above, the record clearly establishes that respondent, in order to aid and abet Pavlico/Milan in duping potential "investors" to participate in the bogus "Prime Bank" scheme, engaged in a pattern of blatant misrepresentation, leveraging her status as an attorney with a trust account to lend authenticity to the ruse. She executed escrow agreements with each investor, whereby they retained her firm as their counsel, thus, creating an attorney-client relationship with each one. Once "investor" funds were received into trust, she immediately and systematically misappropriated those funds, without the authorization of her clients, resulting in the theft of $1.9 to $2.665 million. Whether the funds were technically client funds, under Wilson, or escrow funds, under Hollendonner, is of no moment; under either characterization, she knowingly misappropriated them. For this misconduct, she must be disbarred. In light of our recommendation, we need not address the appropriate discipline for respondent's additional ethics violations.

Member Gallipoli 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 Brynee K. Baylor
Docket No. DRB 17-026

Argued: April 20, 2017

Decided: July 12, 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