SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-133
District Docket No. XIV-2013-0305E

IN THE MATTER OF

PAUL WALTER GRZENDA

AN ATTORNEY AT LAW

Decision

Argued: July 20, 2017

Decided: October 26, 2017

Timothy J. McNamara appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before us on a recommendation for disbarment filed by a special master. The two-count formal ethics complaint charged respondent with violations of RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 (1979) and In re Hollendonner, 102 N.J. 21 (1985) (knowing misappropriation of client and escrow funds), and RPC 8.4(c)

(conduct involving dishonesty, fraud, deceit or misrepresentation) (count one); and RPC 5.5(a)(1) (practicing law while ineligible) (count two).

The Office of Attorney Ethics (OAE) agrees with the findings and determinations of the special master, and urges us to recommend respondent's disbarment. Respondent contends that he committed no knowing misconduct in respect of count one and, therefore, disbarment is not warranted. For the reasons detailed below, we find that respondent committed knowing misappropriation, and recommend his disbarment.

Respondent earned admission to the New Jersey bar in 1985, and has practiced as a certified public accountant (CPA). During the relevant times, he maintained a law practice in South Plainfield, New Jersey. He has no prior discipline.

On June 6, 2012, respondent was selected for a random audit of his attorney trust and business accounts for the period of June 1, 2010 through May 31, 2012. The audit took place on June 26 and July 25, 2012, and on February 25, May 14, and October 7, 2013. On March 14, 2013, during the pendency of the random audit, Steven G. Maurer, Esq. filed a grievance against respondent, alleging the possible misuse of trust funds that respondent held, in escrow, for the payment of property taxes in connection with a real estate transaction.

The random audit revealed respondent's knowing misappropriation of both client and escrow funds between June 2012 and August 2013. Respondent routinely withdrew funds from his attorney trust account for personal or business use, invading client and escrow funds and creating shortages in the trust account. Moreover, the audit revealed that respondent had engaged in "lapping," that is, taking one client's funds to pay trust obligations owed to another client – in a nutshell, "robbing Peter to pay Paul," but always making certain that "Peter's funds" were replenished when it was time to repay "Peter." See In re Brown, 102 N.J. 512, 515 (1986). Respondent admittedly made multiple deposits of cash and of fee checks into his attorney trust account to cover trust shortages, negative client balances and obligations as they became due.

During the ethics hearing and before us, respondent admitted that he had "lapped" clients' and third parties' funds. He claimed, however, that, despite his status as a CPA, he "wasn't aware it was happening" because he was not diligent in his recordkeeping and had problems with his QuickBooks program. Moreover, during the ethics hearing, respondent repeatedly admitted that he did not have the prior authorization of both parties, in respect of escrow funds, to use those funds to pay the obligations of other clients or third parties, but asserted

that he always sought verbal authorization from his client to do so.

Despite his lack of prior authorization and repeated use of escrow funds for transactions unrelated to the source of the funds, respondent denied having committed knowing misappropriation, maintaining that he had committed "inadvertent misappropriation." Respondent acknowledged, however, the rule addressed in Hollendonner and In re Gifis, 156 N.J. 323 (1998) – that escrowed funds cannot be disbursed without all interested parties' prior authorization; moreover, he admitted that his ignorance of that ethics rule does not excuse his misconduct.

On August 9, 2015, after four days of testimony at the ethics hearing, respondent submitted a motion, via e-mail, seeking a thirty-day continuance to obtain a report from a forensic accountant regarding the operation of his QuickBooks program in 2012 and 2013. Respondent filed the motion, despite admitting, under oath, on the first day of the ethics hearing, that he had engaged in "lapping" attorney trust account funds and had repeatedly used escrow funds without the prior consent of all interested parties. Moreover, respondent had not previously asserted, as a defense, any issues with his QuickBooks program (1) during his demand audit interviews; (2) in his reply to the underlying grievance filed by Maurer; (3) in

his verified answer to the ethics complaint, which he prepared with the assistance of counsel and in which he asserted six affirmative defenses; or (4) at any pre-hearing conferences. Because the motion was untimely, failed to meet the good-cause requirement contained in R. 1:20-5(a)(2)(A)(6), and was at odds with respondent's admissions of wrongdoing under oath at that point, the special master denied the motion.

Count One

Count one of the formal ethics complaint charged respondent with ten instances of knowing misappropriation of attorney trust account funds, between June 2012 and August 2013. In his verified answer to the complaint, respondent denied having committed any knowing misappropriation, and further asserted that he had obtained the express verbal authorization of his clients to use trust funds in which they had an interest to cover other parties' obligations. Respondent conceded, however, that it was not until after the formal ethics complaint had been filed that he sought written certifications of authorization from all of the clients and third parties whose escrow funds he had repeatedly used without their prior authorization.

Shortages Discovered During the Random Audit

After the first random audit session, which took place on June 26, 2012, Mary E. Waldman, then the OAE's Assistant Chief of Random Audit, identified a total of $20,399.74 in negative client balances in respondent's attorney trust account, affecting thirty-two clients. When Waldman asked respondent whether that total was correct, he replied "[s]omething like that." Waldman testified that, following the first random audit session, she had instructed respondent to immediately deposit sufficient funds in his attorney trust account to cover those negative balances. Respondent refuted Waldman's testimony, denying that she had provided him with such an instruction, but admitted that, on July 24, 2012, he made a deposit of $20,399.74 to his attorney trust account, after his secretary told him to do so. Respondent claimed that he had deposited cash into his attorney trust account "three or four times" because he "had to make sure everything was covered." The May 14, 2013 demand audit session was recorded and transcribed. During that session, respondent acknowledged Waldman's position that his trust account was more than $20,000 short, and that he had, thus, deposited over $20,000 to "cover the negative balances."

The day after depositing the $20,399.74 in his attorney trust account, respondent began disbursing those funds, and

more, to himself, stating he did so "because it was my money . . . it was owed to me." Respondent further claimed that a client, Chetan Patel, had authorized him to use Patel's trust funds in any way he saw fit. Specifically, between July 25 and October 15, 2012, respondent issued and cashed twenty trust account checks, totaling $33,550, written to him as the payee, in amounts ranging from $500 to $1,200. Waldman testified that, based on her forensic review of respondent's attorney trust account records, at the time respondent disbursed more than $9,000 of that $33,500 to himself, purportedly for a legal fee owed from Patel, respondent was not holding any funds on behalf of Patel in his attorney trust account.

The OAE determined that "a number of" those checks were deposited in respondent's personal accounts, his CPA business account, and his payroll account. During an OAE interview, respondent admitted both to "lapping" and creating client trust shortages, stating "I don't deny that. It shouldn't have happened, but it did." He also admitted paying his secretaries in cash, including by funds drawn from his attorney trust account, due to the prior occurrence of bounced payroll checks.

During the ethics hearing, although respondent denied any shortage in his attorney trust account, he admitted that he had made several accounting errors, and that multiple client sub-

accounts had never been "zeroed out." Respondent attempted to mitigate his conduct by stating "I was not aware of lapping. I tried to deal with QuickBooks . . . If something was lapped it was done without any knowledge of that happening."

The WaWa from Sahaba Matter

On August 10, 2012, respondent served as settlement agent in a real estate transaction whereby his client, WaWa Realty, LLC ("WaWa") purchased a property in Newark, New Jersey from Sahaba Realty, LLC ("Sahaba"), for one million dollars. As stated previously, eight months later, on March 14, 2013, Steven G. Maurer, who had represented Sahaba in the transaction, filed a grievance against respondent, alleging that he had misappropriated attorney trust funds that had been escrowed for that transaction.

Respondent confirmed that, as the settlement agent for the WaWa/Sahaba transaction, he had prepared and executed the HUD-1 for the transaction, certifying that "[t]o the best of my knowledge the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction."

Despite that certification, respondent conceded multiple inaccuracies on the HUD-1. Specifically, line 303 of the HUD-1 certified that WaWa had provided $191,429.58, in cash, to respondent, as settlement agent, to consummate the purchase. Respondent admitted that, as of the closing, WaWa had provided him with only $119,557.14. Respondent further admitted that he had returned to WaWa a portion of its escrow funds, prior to closing; his client confirmed that fact. OAE auditor Waldman testified that, based on her examination of respondent's trust account records, WaWa had deposited only $98,789.36 in escrow for the transaction. Respondent admitted that he never told Sahaba or Maurer that his client lacked the funds required to close the transaction as set forth on the HUD-1. He maintained, however, that, despite the WaWa shortage, his certification on the HUD-1 did not constitute a misrepresentation, stating

> according to the [HUD-1] it says it's due from [WaWa]. See, it says cash from. You call your client up and say you better bring some money over here. It doesn't mean [WaWa] brought it . . . . a lot of times with these [HUD-1s] you put them together and the client may be short. You try to work things out. There's things working out here to the last second and even beyond . . . That's what happens.
>
> [1T94-1T95,1T102.][1]

[1] Respondent was not charged with a violation of RPC 8.4(c) for his misrepresentations on HUD-1 forms.

In connection with the closing, respondent disbursed $135,867.50 in sales proceeds to Sahaba, via an attorney trust account check, on behalf of WaWa. According to Waldman, that disbursement invaded $37,078.14 in other clients' funds held in trust, and was an example of respondent's pattern of improper "lapping." Respondent testified that, due to WaWa's shortage of funds, prior to the closing, he had approached another client, Chetan Patel, and "I said, hey, look, this is the transaction that we have, if I'm short can I use whatever funds you have and he said yes." Respondent conceded that, at the time he disbursed the $135,867.50 sales proceeds to Sahaba, he was holding funds of other clients, in addition to Patel, in his attorney trust account.

The HUD-1 also required respondent to pay more than $25,000 in property taxes and a $9,575 realty transfer tax fee, from the settlement funds, to close the transaction. Respondent admitted that he did not make those disbursements in a timely fashion, because, as a result of WaWa's failure to bring sufficient funds to the closing, he did not have enough money in his attorney trust account to satisfy those obligations. Respondent admitted that he paid the property taxes for the WaWa/Sahaba transaction to the City of Newark seven months after the closing took place, and that he paid them using attorney trust funds that belonged

to other clients, including Chetan Patel, whom respondent again asserted had given him verbal authorization to use his trust funds.

Upon further questioning, however, respondent conceded that he paid the property taxes using a $21,500 cashier's check, obtained on March 15, 2013, using funds he held in escrow in his attorney trust account, associated with an unrelated real estate transaction in which Patel was the buyer and Jorge Castro was the seller. Respondent admitted that, when he used that $21,500 in attorney trust funds to pay the property taxes for the WaWa transaction, he had no prior written authorization from Patel, had no permission whatsoever from Castro, and was unaware of the Hollendonner rule that "an escrow holder acts as the agent for both parties."

Moreover, respondent admitted that he did not comply with the ethics rules applicable to borrowing money from clients and/or third parties when he used those attorney trust account funds. Respondent admitted that his ignorance of the Hollendonner rule was no excuse, and conceded that he needed prior authorization from both Patel and Castro to properly use those escrowed funds. Respondent acknowledged that, after the formal ethics complaint was filed, he sought belated written authorization from Patel and Castro, which he eventually

received from Patel, in 2014, but not from Castro. During the ethics hearing, Castro testified that he would not have given permission to respondent to use the escrow funds for other clients and other transactions.

Respondent also admitted that he paid additional taxes for the WaWa transaction to the City of Newark, using a $15,950 cashier's check, obtained on April 10, 2013, purchased with funds he held in escrow in his attorney trust account, which pertained to yet another real estate transaction involving parties named Harewood, Devang, and Shah. On April 1, 2013, Kavita Shah, who was not respondent's client, escrowed $30,000 with respondent, who served as the settlement agent for the transaction. Also on April 1, 2013, an additional $1,000 was escrowed for the same transaction, on behalf of Shah, via a check from George Roberts Realty, Inc. Respondent admitted that, when he used that $15,950 in attorney trust funds to pay the additional property taxes for the WaWa transaction, he did not have prior authorization from all of the parties with interests in those trust funds, and, again, was unaware of the Hollendonner rule; moreover, respondent admitted that he did not comply with the ethics rules involved in borrowing money from clients and/or third parties when he used those funds. Respondent asserted, however, that he had verbal authorization

from his client, Eleanor Harewood, to use the funds, and subsequently sought written authorization from the relevant parties, after the formal ethics complaint was filed.

During the ethics hearing, however, Harewood testified that the $30,000 deposit from Shah "was supposed to be put into an escrow account to be held until the transaction of the sale was completed," and that she never gave respondent verbal or written permission to use those escrow funds in any manner.

Respondent's client in this transaction, who owned the WaWa entity, testified that he believed that respondent had actually loaned him more than $27,000 in other parties' escrow funds used to pay the taxes.

The Woodland Avenue from Bright Way Developers Matter

On April 2, 2012, respondent acted as settlement agent in a real estate transaction whereby his client, 1101-17 Woodland Avenue, LLC ("Woodland") purchased a property in Plainfield, New Jersey from Bright Way Developers ("Bright Way"), for $156,835.

Pursuant to the HUD-1 for the transaction, which respondent prepared, Woodland was required to provide $160,285.29 to respondent, as settlement agent, to consummate the purchase. On April 2, 2012, respondent deposited $160,381.77 in his attorney trust account via a cashier's check provided by Woodland. In

connection with the closing, on April 2, 2012, respondent disbursed $94,914.34 to Bright Way from his attorney trust account, including $74,102.15 in sales proceeds, leaving a trust balance of $65,467.42 for this transaction. According to the HUD-1 for the transaction, that trust balance was earmarked for the immediate satisfaction of three Plainfield tax sale certificates operating as liens against the property, as follows:

Tax Sale Certificate #09-013	-	$38,555.63
Tax Sale Certificate #10-751	-	$23,336.05
Tax Sale Certificate #12-004	-	$ 3,575.74

Respondent, however, initially satisfied only one of the tax sale certificates using those earmarked funds, disbursing $38,555.63 in trust funds to Plainfield for tax sale certificate #09-013, but did not do so until more than five months later, on September 4, 2012. Because he paid that certificate late, respondent was required to pay a penalty, via check, using personal funds. On July 5, 2012, respondent issued attorney trust account checks #3736 and #3737, in the amounts of $3,575.74 and $23,336.05, respectively, for the remaining tax sale certificates; he did not provide them to Plainfield, but, rather, gave them to Danilo Sales, a title agent from Legal Option Title Agency Inc., claiming there was some confusion as to the amounts owed to Plainfield.

More than six months later, on January 31, 2013, Columbia Bank, the financial institution where respondent maintained his attorney trust account, informed him that the checks he had given to Sales had not been negotiated. On March 5, 2013, after reclaiming checks #3736 and #3737 from Sales, respondent deposited them in his attorney trust account. Instead of using those funds to finally satisfy the tax sale certificates held by Plainfield, respondent instead used those funds to (1) pay Newark for taxes owed in connection with the WaWa/Sahaba transaction, as set forth above; and (2) pay the buyer's deposit for the Yelda from Estate of Duffy transaction, described below. Respondent did not have the prior authorization of the parties interested in those funds to use them in this manner.

On May 10, 2013, respondent finally satisfied tax sale certificate #10-751, for $29,916.47, versus the $26,734.45 owed as of the closing date. Respondent cobbled together the funds necessary to satisfy that certificate using $10,000 from the escrowed deposit in the Harewood, Devang, and Shah transaction, $2,916.47 from a personal account, and $7,000 from a joint personal account held with his wife.

On October 18, 2013, respondent finally satisfied tax sale certificate #12-004, for $19,988.88, versus the $3,575.74 owed as of the closing date. Respondent again pulled together the

funds necessary to satisfy that certificate via nine checks drawn largely on his personal funds.

The Keystone from Patel Matter

On October 31, 2013, respondent's attorney trust account was overdrawn by $220.86. On November 16, 2012, he made a cash deposit of $300 to rectify that overdraft. On November 19, 2012, he made a $5,000 cash deposit to the trust account for the Keystone from Patel real estate matter. He admitted that he used those escrow funds, without the prior consent of all of the interested parties to those funds, to pay six outstanding checks, totaling $3,198.65, for the unrelated S&S New Beginnings closing, which occurred on October 10, 2012. Respondent claimed that he had verbal permission from his client, Patel, to use those funds.

The Kukan's Automotive Matter

On December 18, 2012, respondent issued attorney trust check #3840, in the amount of $7,000, to Union Center National Bank, on behalf of client Kukan's Automotive. At the time respondent issued that check, he was holding only $1,050 in his attorney trust account on behalf of Kukan's, which funds had been deposited three days earlier. During the ethics hearing and

before us, respondent admitted that he knew that he was not holding enough money from Kukan's to cover the $7,000 check, but, nevertheless issued the check from his attorney trust account. Respondent claimed a belief that Kukan would promptly provide additional funds, and asserted that he was trying to help his client during the holiday season. By issuing that $7,000 check, respondent knowingly invaded $5,950 in attorney trust funds associated with deposits he held in escrow, including the following deposits:

Frenson	-	$1,000
Pederson	-	$2,500
Frenson	-	$1,500
Keystone	-	$5,000

In his answer to the complaint, during the ethics hearing, and before us, respondent claimed that he had the express verbal authorization of his clients to use these funds, but did not secure written authorization until after the formal ethics complaint was filed. During the ethics hearing and before us, however, respondent acknowledged that his issuance of the $7,000 check invaded other clients' funds. Despite the fact that he admitted he knew that he was not holding $7,000 on behalf of Kukan's, he maintained that he had not invaded those funds "knowingly."

The Brothers Pizza to Tina Matter

On January 1, 2013, respondent's attorney trust account balance was $2,430.49. On January 14, 2013, $10,000 was deposited in his attorney trust account, representing a buyer's deposit in the Brothers Pizza/Andrew Tina real estate transaction. Respondent wholly exhausted the $10,000 to pay the obligations of other clients, without the prior consent of all of the parties to the transaction. Respondent claimed that he had verbal authorization from his client, Maynor Veliz, to use the funds. However, the buyer in the transaction, Andrew Tina – not Veliz – had made the deposit into respondent's attorney trust account, as required by the contract of sale.

Specifically, on January 10, 2013, respondent issued attorney trust account check #3842, in the amount of $1,000, to Richard I. Chung Chow, as a deposit to seller. Next, on January 14, 2013, respondent issued attorney trust account check #3843, in the amount of $5,000, to Narwarlal and Kalavati Patel, as a deposit to seller. Finally, on January 18, 2013, respondent issued attorney trust account check #3845, in the amount of $5,000, to the Estate of Zwerko, as a deposit to seller.

The Yelda Matter

On February 1, 2013, $10,000 was deposited in respondent's attorney trust account on behalf of his client, Sreekanth Yelda, for a real estate transaction. Prior to this deposit, the balance of respondent's attorney trust account was $1,430.49.

Respondent then issued attorney trust account check #3847, dated January 1, 2013, in the amount of $10,000, to Brothers Pizza, as a deposit to seller. On February 13, 2013, that check was negotiated, resulting in the invasion of Yelda's trust funds. The parties to the Yelda transaction did not provide prior consent for respondent's use of those funds. Respondent claimed that he had verbal authorization from his client, Yelda, to use the funds, but did not assert that he had the consent of the other party to the transaction.

The 377 Oak Street to Benevento Matter

On March 6, 2013, respondent issued attorney trust account check #3848, in the amount of $10,000, to the Estate of Duffy, as a deposit to seller, on behalf of his client, Yelda. As of this date, however, respondent had used the entirety of Yelda's funds to pay the deposit in the Brothers Pizza transaction, described above. Respondent's issuance of check #3848 invaded funds that he held in escrow for the Woodland/Bright Way

transaction described above, and for the Benevento/377 Oak Street transaction. The parties to the Benevento/377 Oak Street transaction did not give prior consent for respondent's use of those funds. Respondent claimed that he had verbal authorization from his client, Gary DeJohn, to use the funds.

At the ethics hearing, Gary DeJohn testified that respondent represented him in the sale of real estate located at 377 Oak Street in Perth Amboy, New Jersey, to Michael Benevento. According to DeJohn, respondent did not have his permission – verbal or written - to borrow or use the $5,000 escrowed in respondent's attorney trust account for that transaction. DeJohn recounted that, at some point after the transaction closed, respondent had asked him for a certification that he had given respondent permission to use those escrow funds; DeJohn never executed such a certification, "[b]ecause it wasn't true."

Attorney Bryan Bonk, who represented the Beneventos in the transaction, testified that his clients provided a deposit check, in the amount of $5,000, payable to respondent's trust account. According to the contract governing the real estate transaction, respondent was to hold all deposit monies in trust and release them only upon the closing of the transaction. Bonk recalled that, after closing occurred on June 21, 2013, he received multiple letters from respondent requesting that his

clients execute an enclosed certification that represented that his clients had given respondent permission to use those escrow funds "as he saw fit, including using same to cover other client's obligations." Bonk advised his clients, on each occasion, not to execute the certification, since it was not true.[2]

Michael Benevento testified that he neither agreed to a loan, nor granted respondent permission to use his escrow funds. For that reason, he refused to sign the certification requested by respondent.

The Rupesh Shah Matter

On May 13, 2013, $19,000 was deposited in respondent's attorney trust account, on behalf of Rupesh Shah, in connection with the purchase of a business. A portion of this deposit ($2,000) was in the form of a cashier's check provided by respondent, using funds from his personal account at Chase Bank. Respondent claimed he was giving the money to Shah, his client, and was not seeking the return of the funds. Respondent admitted that he did not reduce the "gift" to writing. On May 30, 2013, respondent deposited an additional $5,900 in his attorney trust account on behalf of Shah.

[2] Respondent conducted no cross-examination of Bonk.

On June 3, 2013, respondent's attorney trust account check #3852, in the amount of $30,000, payable to Eleanor Harewood, was negotiated; that amount exceeded the amount respondent held in escrow in connection with Harewood's transaction. As a result, respondent's attorney trust account was overdrawn by $2,143.72. That overdraft was rectified via two fee checks, a cash deposit, and a check from respondent's wife. According to the OAE, as of the date of that overdraft, respondent should have been holding at least $39,691, inviolate, in his attorney trust account, as follows:

Benevento/377 Oak Street	-	$ 5,000
Rupesh Shah	-	$19,000
Issued checks pending negotiation	-	$15,691.46

During the ethics hearing, respondent admitted that he had invaded the Benevento/377 Oak Street attorney trust funds and the Rupesh Shah attorney trust funds. In his verified answer to the formal ethics complaint, respondent admitted that the check he issued to Harewood exceeded the amount he held in escrow for that transaction and, thus, caused a $2,143.72 overdraft of his attorney trust account. During the ethics hearing, respondent admitted that, at the time the $2,143.72 overdraft occurred, he should have been holding $5,000 in trust for the Benevento/377 Oak Street transaction. He additionally admitted that he had no prior authorization from all required parties to use the funds

he held in trust in either the Benevento/377 Oak Street transaction or the Harewood/Shah transaction.

The Colon Matter

In July 2013, respondent admittedly deposited fee checks and cash, totaling $5,981, into his attorney trust account, to cover known shortages, including for the Benevento/377 Oak Street transaction. On July 12, 2013, $5,000 was deposited in respondent's attorney trust account, on behalf of Nancy Colon, for a real estate transaction. Respondent used the Colon escrow toward attorney trust account check #3859, in the amount of $11,359, to Wash & Fold LLC, for an unrelated transaction. Colon did not give prior consent for respondent's use of her funds in this manner, as respondent had claimed.

Count Two

In his verified answer to the formal ethics complaint and in his testimony during the ethics hearing, respondent admitted that, from September 24, 2012 through November 12, 2013, he practiced law despite knowing that he was ineligible due to his failure to pay his annual assessment to the New Jersey Lawyers' Fund for Client Protection.

* * *

The special master concluded that the OAE had proven, by clear and convincing evidence, that respondent committed knowing misappropriation, emphasizing that, despite his asserted defenses, respondent had admitted that he repeatedly engaged in "lapping" of attorney trust account funds. The special master concluded that even though "none of the parties involved "lost money . . . [Wilson] creates a bright line that must not be crossed. Respondent crossed that line, and I am therefore constrained to recommend the mandatory penalty of disbarment."

* * *

Following a de novo review, we are satisfied that the record clearly and convincingly establishes that respondent was guilty of unethical conduct. Specifically, we determine that respondent knowingly misappropriated client and escrow funds, representing deposits in real estate and business transactions, through repeated "lapping" of his attorney trust account funds. Indeed, respondent admitted doing so, claiming only that his conduct was "inadvertent," versus knowing. His affirmative defenses to the allegations of knowing misappropriation are of no moment, and constitute nothing more than obfuscation of the truth - that he had blatantly used his attorney trust account as he saw fit, with no regard to the interests of his clients,

third parties, fellow attorneys, or the bright-line ethics rules governing attorney trust accounts.

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

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

Six years later, the Court elaborated:

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

> the absence of "dishonesty, venality or immorality" — all are irrelevant.
>
> [In re Noonan, 102 N.J. 157, 159-60 (1986)].

Thus, to establish knowing misappropriation, there must be clear and convincing evidence that the attorney used trust funds, knowing that they belonged to the client and knowing that the client had not authorized him or her to do so. This same principle also applies to other funds that the attorney is to hold inviolate, such as escrow funds. In re Hollendonner, 102 N.J. 21 (1985).

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

In this case, respondent repeatedly denied engaging in knowing misappropriation, but conceded that he had committed "inadvertent misappropriation." Specifically, he admitted that, on at least nine occasions, he had used escrow funds that he had been entrusted to hold, inviolate, to pay other clients' or third parties' obligations, without the prior approval of both sides to the governing escrow agreement. Respondent conceded the

application of the rule of Hollendonner – that escrowed funds cannot be disbursed without prior authorization from all interested parties - but claimed that he was unaware of the rule until the OAE investigation. He admitted, however, that ignorance of RPCs does not excuse misconduct, acknowledging the Court's holding in Gifis, supra, 156 N.J. 323.

In our view, however, the record is replete with proof of respondent's knowing misappropriation of escrow funds. The WaWa from Sahaba matter is illustrative of respondent's unethical conduct, wherein he violated Wilson and Hollendonner on at least four separate instances in connection with one real estate transaction, thus, beckoning disbarment.

Specifically, on August 10, 2012, respondent served as settlement and escrow agent in a real estate transaction whereby his client, WaWa, purchased property from Sahaba for one million dollars. As escrow agent, respondent was obligated to hold inviolate funds he had received in respect of the transaction until all conditions were met – here, the closing itself. Respondent failed in that obligation in several respects.

First, respondent admitted that, prior to the closing, he had returned a portion of the escrowed earnest money deposit to his client, without Sahaba's knowledge or authorization, in violation of the contract of sale governing the transaction.

Pursuant to that contract for sale, he was required, as the escrow agent, to hold that deposit, inviolate, in escrow, until conditions of closing were met or the transaction was properly cancelled. Respondent's unilateral disbursement of part of the escrow constituted his first violation of Wilson and Hollendonner in this transaction.

Respondent further admitted that he never told Sahaba or Maurer that his client lacked sufficient funds required to close the transaction, and that WaWa was short by approximately $60,000. That notwithstanding, respondent admitted that, in connection with the closing, he disbursed $135,867.50 in sales proceeds to Sahaba, via an attorney trust account check, on behalf of WaWa. That disbursement invaded $37,078.14 in other clients' funds held in trust, a prime example of respondent's pattern of improper "lapping." Respondent testified that, in anticipation of WaWa's shortage of funds, prior to the closing, he had approached one of his other clients, Patel, and asked if he could use his funds to cover any shortages in the WaWa transaction, to which Patel orally agreed. Respondent conceded, however, that, at the time he disbursed that $135,867.50, he was holding other clients' funds in his attorney trust account, not only Patel's funds. Moreover, he never enumerated how much money he was actually holding on Patel's behalf; Waldman testified

that, based on her forensic examination of respondent's attorney trust account records, he was holding no money on Patel's behalf at that time. This invasion of trust funds constituted respondent's second violation of Wilson and Hollendonner in this transaction.

The HUD-1 also required respondent to disburse more than $25,000 in property taxes and a $9,575 realty transfer tax fee from the settlement funds in connection with the transaction. Respondent admitted, however, that he did not make those disbursements in a timely fashion because WaWa had not provided sufficient funds for the closing. Respondent admitted that he did not pay those property taxes to the City of Newark until seven months after the closing took place, and that he finally paid them using trust funds that belonged to other clients and third parties, without all relevant parties' prior authorization.

Specifically, respondent admitted that he paid those property taxes using escrow funds held for other parties: a $21,500 cashier's check, obtained on March 15, 2013, and a $15,950 cashier's check, obtained on April 10, 2013. The second check was purchased using escrow funds he held for an unrelated real estate transaction involving parties Harewood, Devang, and Shah. Respondent admitted that, when he used that $15,950 in

attorney trust funds to pay the additional property taxes for the WaWa transaction, he did not have prior written authorization from the parties with interests in those attorney trust funds, and, again, was unaware of the Hollendonner rule; moreover, respondent admitted that he did not comply with the RPCs involved in borrowing money from clients and escrowees when he used those attorney trust funds. Respondent claimed, however, that he had verbal authorization from his client, Eleanor Harewood, to use the funds, and subsequently sought written authorization from the relevant parties, after the formal ethics complaint was filed.

During the ethics hearing, however, Harewood testified that the $30,000 deposit relating to her transaction "was supposed to be put into an escrow account to be held until the sale was completed," and, further, that she did not give respondent verbal or written permission to use the escrow funds in any manner. These invasions of trust funds constituted respondent's third and fourth violations of Wilson and Hollendonner in this transaction.

Respondent's client in this transaction, who owned the WaWa entity, testified that he believed that respondent had loaned him the more than $27,000 used to pay the taxes.

Similarly, in the other nine instances of knowing misappropriation, respondent admittedly used other parties' escrow funds to satisfy obligations in unrelated transactions. In some of these cases, respondent obtained the consent of his client to use the funds, but only after respondent already had used the funds. More importantly, respondent did not obtain the consent of all parties to the escrow agreement, as Hollendonner and Gifis require. Once respondent realized the gravity and consequence of his misconduct – mandatory disbarment – he shamelessly attempted to obtain the consent of the necessary parties, well after their transactions had closed. These parties, or their counsel, refused to sign the proposed certifications because they were not accurate – the consent had not been given prior to the use of their escrow funds. Although the complaint did not charge respondent with a violation of RPC 8.4(c) in this regard, his brazen attempt to defeat the consequences of his own actions constituted conduct involving dishonesty, fraud, deceit or misrepresentation. Respondent's conduct in the WaWa matter mandates his disbarment.

During argument before us, respondent admitted that, in respect of the Kukan's matter, he issued a $7,000 check on behalf of Kukan's, despite knowing that he held only approximately $1,000 in trust on behalf of that client. That

invasion of trust funds constituted a violation of Wilson and Hollendonner, also mandating respondent's disbarment.

The OAE correctly compared respondent's brazen conduct to that of the attorney in In re Gifis, supra, 156 N.J. 323. In that case, the attorney blatantly used real estate deposits and settlement funds for his own purposes, claiming that he did not need both parties' permission to use the funds. The attorney contended that his use of the deposit was not knowing misappropriation because he was unaware of the rule of In re Hollendonner, supra, 102 N.J. 21, and because he honestly, but mistakenly, believed that the funds belonged solely to one of the parties. We rejected those arguments and recommended that Gifis be disbarred. The Court agreed.

Like the attorney in Gifis, respondent blatantly used real estate deposits and settlement funds for his own purposes, claiming that he did not know that he needed both parties' permission to use the funds, and, alternatively, that he had verbal authorization from his clients to use the funds. He ignored the fact that, in most instances, the other party to the transaction, not his client, had deposited the escrowed funds into his attorney trust account as an earnest money deposit. He contended that his use of these trust funds was not knowing misappropriation, but, rather, was "inadvertent misappropriation,"

because he was unaware of the bright-line rule of In re Hollendonner, supra, 102 N.J. 21. As in Gifis, we reject respondent's hollow arguments and recommend his disbarment to the Court.

Finally, we address respondent's belated motion for a continuance of the ethics hearing. Although it is true that, where attorneys face the ultimate sanction of disbarment, they are furnished wide latitude to present their case, the special master properly denied respondent's motion for a thirty-day continuance to seek a forensic review of his Quickbooks software. Respondent first requested the continuance after four days of testimony at the ethics hearing, claiming that he wished to seek a report from a forensic accountant regarding the operation of his QuickBooks accounting program in 2012 and 2013. He made the motion, despite having previously admitted, under oath, that he had repeatedly engaged in "lapping" attorney trust account funds and had repeatedly used escrow funds, without the prior consent of all interested parties. Moreover, respondent made the motion, despite the fact that he had not asserted any issues with his QuickBooks as a defense during his demand audit interviews; in his reply to the underlying grievance filed by Maurer; in his verified answer to the ethics complaint, prepared with the assistance of counsel in which he asserted six

affirmative defenses; or at any pre-hearing conferences. Because the motion was untimely, failed to meet the good-cause requirement of R. 1:20-5(a)(2)(A)(6), and was inconsistent with respondent's admissions of wrongdoing under oath by that point, the special master properly denied the motion.

Accordingly, because respondent knowingly misappropriated client trust funds and third-party escrow funds, disbarment is the only appropriate sanction, pursuant to the principles of Wilson and Hollendonner. We so recommend. Therefore, we need not address discipline for his additional ethics violation of practicing law while ineligible.

Member Hoberman 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 Paul W. Grzenda
Docket No. DRB 17-133

Argued: July 20, 2017

Decided: October 26, 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