SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 89-161

IN THE MATTER OF :
JOHN P. RUSSELL, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: November 29, 1989

Decided: February 7, 1990

William R. Wood appeared on behalf of the Office of Attorney Ethics.

John P. Doran appeared on behalf of respondent, who was also present.

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

This matter is before the Board based upon two presentments filed by the District VI Ethics Committee.

1. **THE CALIA MATTER**
DOCKET NO. VI-82-83E

By way of procedural background, on December 9, 1982, Timothy Madden, Esq., the investigator assigned to this matter, recommended to the committee secretary that the grievance filed against respondent be dismissed. Exhibit CC-4. On December 12, 1982, the then Division of Ethics and Professional Services filed an appeal from the committee's determination to dismiss the matter and

demanded an audit of respondent's business and trust account records. Exhibit CC-6.

By letter dated February 28, 1983, the Board notified the committee secretary that the appeal had been granted. The Board directed that the committee conduct a further investigation of the Calia grievance and that respondent's business and trust account records be audited. Exhibit CC-7.

Thereafter, on April 28, 1983, Mr. Madden undertook a limited audit of respondent's business accounts and trust records for the Calia matter,[1] including the ledger sheet. On September 21, 1983, the committee filed a formal complaint charging respondent with, among other things, misappropriation of the Calia funds.

On December 13, 1983, the OAE demanded that respondent produce his books and records on December 19, 1983, for the purpose of having a review and audit conducted by an accountant retained by that office. A rescheduled audit date was set for December 22, 1983. On December 20, 1983, respondent's secretary informed the OAE that all of respondent's business and trust records had been stolen from respondent's automobile, while parked in Trenton. Luckily, Mr. Madden had transcribed the Calia ledger sheet in his own handwriting, "word-for-word and number-for-number," during his visit to respondent's office on April 28, 1983. Exhibit CC-12.

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[1] As explained by Mr. Madden during his testimony, in view of his demonstrated experience with trust accounts and of the time constraints attendant to this matter, the Office of Attorney Ethics ("OAE") agreed that he conduct the above limited review (T9/22/1987 169, 170, 171).

Turning to the facts of the Calia matter, respondent, a member of the New Jersey bar since 1964, was retained by Margaret Calia in early 1982 to represent her in connection with the sale of her house. Respondent had handled only three or four closings of title over a period of twenty-odd years, most of his practice consisting of criminal law matters. He agreed, however, to represent Mrs. Calia in the sale of her house because she was an old friend and because she "gave the impression that I couldn't give [the closing] to any other lawyer" (T7/7/1988 77-7 to 9). Mrs. Calia was 76 years old at the time of the ethics hearings in 1988.

The closing of title took place on May 26, 1982. The gross proceeds of sale amounted to $48,512; the net proceeds of sale totalled approximately $44,000. On May 27 and 28, 1982, respondent deposited $48,512 in his trust account in behalf of Mrs. Calia ($47,717 plus $795). Exhibits CC-8 (trust account statement dated June 11, 1982), CC-10 (deposit slip dated May 27, 1982), and CC-12 (Calia ledger sheet). On June 2, 1982, respondent wrote to himself, as payee, trust account check No. 1001 for $6,000, which he then deposited in his personal account[2] on June 3, 1982. Exhibits CC-9 and C-11.

According to respondent's explanation to Mr. Madden in the initial stage of the ethics investigation, respondent transferred

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[2] The record at times refers to this account, No. 157-88926-7, as respondent's **business** account. Pursuant to the OAE, this was respondent's **personal** account. Respondent's business account differed from this account because it was designated as such.

$6,000 to his personal account to allow his secretary, who was not empowered to sign trust account checks, to pay certain outstanding bills in Mrs. Calia's behalf. Respondent explained that he would be spending the summer months trying two matters in South Jersey and New York City. At the ethics hearings, however, both respondent and his secretary testified that it was respondent's practice to authorize her to sign both trust and business accounts checks in his name. His secretary added that she never signed a check without respondent's prior approval and consent. In fact, she endorsed respondent's name on the back of the $6,000 check, with respondent's knowledge and consent.

There were only four outstanding bills to be paid in Mrs. Calia's behalf: the real estate broker's commission, in the amount of $3,360, and three utility bills totalling $99.40 (T/9/22/1987 85). On June 9, 1982, two weeks after the closing, respondent paid the broker's commission; on July 28, 1982, two months after the closing, he paid the utility bills. Respondent did not forward the net proceeds of sale to Mrs. Calia until August 12, 1982, two and one-half months after the closing. On that date, he sent a $36,000 check to Mrs. Calia. It was not until November 1982, five and one-half months following the closing, that respondent finally forwarded to Mrs. Calia the balance of the net proceeds, in the approximate amount of $8,000, from his **business** account funds.

From May 27 through August 12, 1982, respondent should have been holding Calia trust funds in excess of $44,000. As stated above, on May 28, 1982, respondent deposited $48,512 in his trust

account in behalf of Mrs. Calia. Exhibit CC-8. On June 9, 1982, however, respondent's trust account balance fell to $42,618.86; on June 10, 1982, it fell further to $38,819.61; by June 11, 1982, the balance was $38,245.71. For the next two months, the balance remained slightly above $36,000. Schedule B attached to the OAE brief to the Board dated November 20, 1989. Consequently, between mid-June and mid-August 1982, respondent was $8,000 out-of-trust with regard to the Calia funds. He remained out-of-trust by approximately $8,000 from August 12 until November 9, 1982, when he finally forwarded the balance of the sale proceeds to Mrs. Calia. Id.

Respondent's personal account statement (Exhibit CC-11) reflects that, on the same day that respondent deposited the $6,000 check in his personal account, check No. 1028, in the amount of $5,000, cleared that same account. That check, dated May 31, 1982, was payable to Abelson Olds, Inc. and designed to pay for a new automobile for respondent. Exhibit CC-13A. Nevertheless, on May 31, 1982, the date that the $5,000 check was written, there were insufficient funds in respondent's personal account to cover that check. A review of the bank statement shows that, between May 28 and June 1, 1982, the balance in respondent's personal account was only $1,299.23. Exhibit CC-11.

Respondent testified that the $5,000 check to Abelson Olds, Inc., was covered by a loan from his sister, Kathleen Walsh, for whom he was holding $10,000 in trust funds. At approximately the same time as the Calia closing, respondent's office handled two

real estate transactions in his sister's behalf: the sale of a house in Kearny and the purchase of a house in Wayne.[3] Respondent initially contended that, as his sister's attorney, he was holding in his trust account a $10,000 deposit received from the buyers of the Kearny house. The contract of sale had been signed in February 1982. After his automobile accident, respondent asked his sister if he could use a portion of those monies to purchase a new car. His sister agreed. He then withdrew $5,000 from his trust account to pay for his new automobile (T7/7/1988 81-18 to 82-4).

At later times during his testimony, however, respondent alternated between asserting that the $10,000 held in his sister's behalf had come from the deposit monies in connection with the sale of the **Kearny** house and contending that his sister had given him $10,000 toward closing costs and other expenses related to the purchase of the **Wayne** house. On at least one occasion, respondent testified that he could not remember the source of the $10,000 trust funds. He acknowledged, however, that it was possible that they were deposit monies in connection with the sale of the Kearny house. Indeed, the record supports the conclusion that the $10,000 constituted deposit monies put down by the buyers of the Kearny house. The closing statement pertaining to the sale of the Kearny house, dated June 3, 1982, shows that the buyers gave a $10,000 deposit in connection with that transaction. Part of Exhibit CC-

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[3] Although respondent was the attorney of record in those transactions, an attorney with whom he shared office space, William Scheurer, attended both closings of title.

19, line 501. Furthermore, respondent later acknowledged that the sum given by his sister for the closing of the Wayne house amounted to $18,250. This sum was deposited in his trust account on June 7, 1982, four days after the $5,000 check to Abelson Olds, Inc. cleared the account. Exhibit CC-10 (deposit slip of $59,092.57). Accordingly, his sister's loan could not have been from the $18,250 sum.

Respondent was unable to remember whether the $10,000 check given to him by his sister was a check from the buyers' attorney or from his sister.[4]

In response to a question by the presenter about how respondent could be sure that the $10,000 represented his sister's funds, respondent testified that, on May 28, 1982, he deposited $14,795.57 into his trust account. Exhibit CC-8 in evidence. Out of this sum, $10,000 belonged to his sister, $4,000 were his own funds, and $795.57 belonged to Mrs. Calia.[5]

As to the reason for depositing $4,000 of his own funds in his trust account, respondent testified that one of his clients, Ralph Sheprow, was demanding the refund of a $5,000 retainer previously

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[4] Because respondent's books and records were stolen from respondent's car, the identity of the payor of that check could not be determined.

[5] Part of Exhibit CC-10 in evidence is a deposit slip for $14,795.57, dated May 27, 1982. Curiously, although the $795.57 sum is listed as a separate check, the slip shows that respondent apparently submitted one check only for the combined deposit of his sister's $10,000 and his own $4,000.

paid to respondent. Respondent had been retained to represent Mr. Sheprow, a police officer in Jersey City, in connection with criminal charges filed against Mr. Sheprow. Respondent had agreed that, in the event that he was successful in recovering counsel fees from the City in excess of $5,000, he would refund the retainer monies to Mr. Sheprow. Although Mr. Sheprow was acquitted and was compensated for his loss of income, the counsel fee award against the City amounted to only $4,000. This notwithstanding, respondent agreed to return $5,000 to Mr. Sheprow. On June 3, 1982, respondent withdrew $5,000 from his **trust** account by means of a bookkeeping debit slip signed by respondent's secretary. Exhibit CC-8 (trust account statement) and Exhibit CC-9 (bookkeeping debit slip dated June 3, 1982). Respondent requested the bank to issue a certified check to Mr. Sheprow.

Respondent testified that he had deposited the original $5,000 retainer sum from Mr. Sheprow in his **business** account. When asked by one of the panel members why he had not refunded the money to Sheprow with **business**, rather than **trust** account funds, respondent replied as follows:

> [A.] I don't know, I don't know why. As a matter of fact, not only did I -- I was so concerned about [Sheprow]. He was get -- [sic] he was bothering me so much as harassing me everyday and not only did I send it from my trust account, you can even see I had it certified.
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> [Q.] But if there was no money on deposit in your trust account for Mr. Shepro's [sic] -- on Mr. Shepro's [sic] behalf, why would you deposit $4,000 in the trust account and then write a check of $5,000?
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> [A.] That's the way I did it. Sorry. That's the

way I did it.
[T7/7/1988 190-20 to 191-8.]

Although the record is not entirely clear, respondent appears to be contending that he used a portion of his sister's $10,000 deposit monies to make up for the $1,000 shortfall between the $5,000 check to Mr. Sheprow and the $4,000 deposit of respondent's own funds.

With respect to the $10,000 loan from his sister, respondent testified as follows:

> [A.] . . . when my sister eventually did buy the house in Wayne, I really didn't think she was going to have to use all of the money that I was holding for her in my trust account. I didn't think she would need anywhere near that money, but it came she needed that money . .
> [T7/7/1988 82-7 to 12.]
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> . . .
>
> [A.] You're saying your sister said that she had enough money to cover. Therefore, you could take the $5,000 or $6,000 out of her moneys [sic]; is that right?
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> [A.] That's what my sister said, yes . . .
> [T7/7/1988 121-5 to 9.]

Respondent's sister, Kathleen Walsh, testified at the ethics hearing of July 7, 1988. According to Mrs. Walsh, she gave $10,000 to respondent to "keep it in his trust account . . . to be used for any fees and things we needed at the closing [of the Wayne house] or whatever" (T7/7/1988 12, 13).

Mrs. Walsh testified that the $10,000 represented the net proceeds of the sale of the Kearny house. This statement is incorrect, however. As the closing statement indicates, the net

proceeds totalled $34,120.65, not $10,000. Part of Exhibit CC-19 in evidence, line 603. Moreover, as respondent's trust account statement shows (Exhibit CC-8 in evidence), the $34,120.65 sum was not deposited in respondent's trust account until June 7, 1982 (part of Exhibit CC-10, deposit slip dated June 4, 1982), seven days after the $5,000 check to Abelson Olds, Inc. was written (Exhibit CC-13A) and four days after the $5,000 check cleared the account (Exhibit CC-11). Accordingly, the $10,000 could not have come from the net proceeds of the sale of the Kearny house. It should be remembered that, according to respondent's testimony, the $10,000 sum was deposited in his trust account on May 28, 1982, as part of the $14,795.57 deposit reflected on the trust account statement. Exhibit CC-8. Later on, Mrs. Walsh conceded that the trust account funds represented deposit monies from the Kearny house transaction (T7/7/1988 23-23).

Mrs. Walsh continued her testimony by saying that, between the time of the closing of title on the Kearny house, the time of the $10,000 deposit in respondent's trust account, and the closing of title on the Wayne house,* respondent "had an accident with his car, and he needed some money, and he wanted to know if he could use some of it. I said, yeah, whatever you need, use it" (T7/7/1988 13, 14). She added that respondent did not tell her how much he needed.

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* The closing on the Kearny house took place on June 3, 1982; the closing on the Wayne house occurred the next day, June 4, 1982.

Respondent admitted that he invaded the Calia funds held in his trust account, but claimed that he did so inadvertently:

> When I took the $5,000 from my sister's money, I thought I would have no problem returning it to her within a week or two, but then when all these other problems occurred right around the same time . . .
> [T7/7/1988 134-22 to 135-2.]

* * *

> . . . I didn't make it up right away, because when my sister eventually did buy the house in Wayne, I really didn't think she was going to have to use all of the money that I was holding for her in my trust account. I didn't think she would need anywhere near that money, but it came she needed that money, and actually when my sister's closing occurred, and all the checks were paid out from my sister's closing, that money -- that amount of money invaded into Mrs. Calia's money who (sic) was still in my trust account.
> [T7/7/1988 82-6 to 16.]

* * *

> . . . then when it came time, about a month or so later, to mail [Mrs. Calia] the -- her net proceeds to her, I realized then I was about $5,000 short . . .. Then I found out that the money was used at my sister's closing.
> [T7/7/1988 83-20 to 23, 84-1 to 2.]

* * *

> I guess when it came time for me to send Mrs. Calia the balance of the money, there should have been no other money in my trust account except Mrs. Calia's money, and she should have received somewhere around forty some-odd thousand dollars, and I could only send her thirty six.
> [T7/7/1988 3 to 10.]

Respondent acknowledged that he did not replace the misappropriated funds soon after he discovered that he was out-of-trust. As stated above, it was not until August 12, 1982, two and one-half months after the closing, that respondent forwarded $36,000 to Mrs. Calia. The balance of the proceeds, in the

approximate amount of $8,000, was not sent to Mrs. Calia until November 9, 1982, five and one-half months after the closing and four months after respondent discovered the trust account shortfall. By respondent's own admission,

> . . . I was going through a bad time at that time, and I just waited until I got the -- I had to pay another -- at that time, I had to pay another disgruntled client [Ralph Sheprow] $5,000, which I didn't feel I had to, but just to save myself some aggravation I paid him, . . . So, when I had to pay this client, and then I had to come up with money for my car, I knew I had just settled a big case. So, I was just waiting for a big insurance [check] . . . and then I got the check, and then I paid Mrs. Calia as fast as I could.
> [T7/7/1988 84-5 to 24.]

> I was short -- after everything was said and done, I was short $5,000, and I waited until I settled a case . . .
> [T7/7/1988 111-4 to 6.]

> . . . I was just having a hard time at that time, and I didn't have the money. As soon as I got it, I gave it back to her . . .
> [T7/7/1988 101-15 to 18.]

On August 12, 1982, when respondent forwarded the $36,000 check to Mrs. Calia, he informed her by letter that he was "holding the balance due, which I estimate to be approximately $6,000.00 for an additional 30 days to clear up all outstanding bills which may still be." See Schedule C attached to the OAE brief to the Board dated November 20, 1989. That was untrue. As respondent admitted during his testimony at the ethics hearing, he did not forward the entire net proceeds to Mrs. Calia because he did not have sufficient funds in his trust account. At the Board hearing, respondent's counsel acknowledged that respondent had lied to Mrs. Calia because he was "embarrassed both emotionally and financially

at the time." BT25.[7]

At the conclusion of the ethics hearings, the committee found that respondent misappropriated client funds, in violation of DR 9-102(B)(4). The committee found further that respondent had been "negligent in the handling of his trust account records -- permitting his secretary to sign his name to the trust account checks, failing to reference trust account checks and deposit slips with the client source, and omitting entries on the ledger sheet," in violation of DR 9-102(B)(3) and (C).

2. **THE CORBISIERE MATTER**
DOCKET NO. VI-83-141E

Frances A. Corbisiere retained respondent shortly after the death of her husband on July 3, 1983, to represent her in the administration of her husband's estate. According to respondent, he requested a $2,500 retainer at that time. In turn, Mrs. Corbisiere testified that, when her son asked respondent about the amount of counsel fees, respondent replied that they would discuss it at a future time. Respondent neither quoted an hourly rate nor prepared a retainer agreement.

On August 5, 1983, respondent sent his secretary, Joy Di Biaso, to meet Mrs. Corbisiere at the bank for the purpose of opening a safe deposit box and conducting an inventory of its contents. In Mrs. Corbisiere's presence, respondent's secretary

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[7] BT denotes the transcript of the Board hearing on November 29, 1989.

collected a cash sum of $4,000 from the safe deposit box, which sum she later delivered to respondent.

Thereafter, respondent kept $2,500 as counsel fees and deposited $1,500 in the estate account. When Mrs. Corbisiere learned of the estate account balance, she attempted to communicate with respondent on numerous occasions, but was unsuccessful. She then retained new counsel to finalize the settlement of the estate. After fruitless negotiations between respondent and Mrs. Corbisiere's new attorney to reduce the counsel fee, that attorney filed suit to collect the $2,500 fee. A default judgment was entered against respondent in that litigation.

At the conclusion of the ethics hearing, the committee found that respondent's withdrawal of counsel fees without his client's knowledge and consent had violated DR 9-102(A)(2) and 1-102(A)(1), particularly where the amount of the counsel fees and the method of payment had not been clearly delineated by respondent to the client.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the full record, the Board is satisfied that the conclusions of the committee in finding respondent guilty of unethical conduct are fully supported by clear and convincing evidence. The Board concurs with the committee's finding that respondent violated DR 9-102(A)(2) in the Corbisiere matter when he retained a $2,500 counsel fee without prior agreement with the client as to the appropriateness of the fee and

without the client's knowledge of and consent to said retention.

As did the committee below, the Board has carefully reviewed and independently assessed the record to determine whether respondent knowingly misappropriated client funds in the Calia matter. The Board concludes that he did.

Misappropriation is "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, 81 N.J. 451, 455 n.1 (1979). The misappropriation that will trigger automatic and almost invariable disbarment "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." Matter of Noonan, 102 N.J. 157, 159-160 (1986).

Seldom is there an outright admission by an attorney that he or she knew, at the time of the occurrence, that he or she was misusing client funds. In the absence of such an admission, circumstantial evidence may lead to the conclusion that a lawyer knew or "had to know" that client funds were being invaded. See Matter of Johnson, 105 N.J. 249, 258 (1987). Like the committee, the Board concludes that the evidence clearly and convincingly establishes that respondent knew that he was invading client funds for his personal benefit.

Respondent contended that the $6,000 sum withdrawn from his trust account on June 3, 1982, was not charged against Mrs. Calia's

trust funds but covered by a loan from his sister out of a $10,000 deposit held in his trust account in her behalf. For a multitude of reasons, the record clearly shows that respondent's contention is unworthy of belief and that he knowingly misappropriated $6,000 in Calia funds to his personal use:

1. Mrs. Calia's ledger sheet (Exhibit CC-12) unequivocally shows that respondent transferred $6,000 in Calia trust funds to his personal account, ostensibly to pay certain outstanding bills owed by Mrs. Calia. Yet, as the record demonstrates, those bills amounted to only $3,459.40. On the date of the closing, May 26, 1982, respondent knew the approximate amount of the bills. The closing statement clearly reflects that, out of Mrs. Calia's gross proceeds, two payments only were to be made: $3,360 for the broker's commission and $234.52 for taxes. Exhibit RC-1. In addition, respondent did not pay those bills until July 28, 1982, two months after the closing and fifty-five days after he withdraw the $6,000 sum from his trust account.

2. Respondent testified that his sister had told him that her funds entrusted to respondent exceeded what she needed to close title on the Wayne house and that, therefore, respondent could use those funds to pay for his automobile. When respondent asked for a loan, he did not tell his sister how much he needed. She told him "whatever you need, use it" (T7/7/1988 14). First, it

is incredible that respondent's sister would give him "carte blanche" to avail himself of whatever trust monies were being held in her behalf. Second, if respondent's sister was unaware of how much respondent needed, she could not possibly have known that she had sufficient monies to cover respondent's needs. Respondent's contention is simply not credible.

3. The proceeds of sale of the Kearny house, $34,120.65, were not deposited in respondent's trust account until June 7, 1982, four days after the $5,000 check to Abelson Olds, Inc. cleared respondent's personal account. Exhibit CC-10 (deposit slip of $59,092.57), Exhibit CC-8 (trust account statement), and Exhibit CC-11 (personal account statement). Similarly, the $18,250 sum earmarked for closing costs in connection with the Wayne house was not deposited in respondent's trust account until June 7, 1982. Accordingly, the only monies on deposit in respondent's trust account were the $10,000 deposit from the sale of the Kearny house* and Mrs. Calia's trust funds. As the committee pointed out, "having only an equitable interest in the $10,000 deposit until title

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* The Board was troubled by the fact that, although the contract of sale was signed in February 1982, the deposit monies were not put in respondent's trust account until May 28, 1982. The Board cannot but harbor a suspicion that the $10,000 deposit on May 28, 1982, was not the original $10,000 given by the buyers of the Kearny house.

passed, [respondent's sister] could not legally authorize her brother to withdraw these escrow funds for his personal use." Panel Report at 4. See Matter of Hollendonner, 102 N.J. 21 (1985).

4. Respondent expressed surprise that his sister used the entire $10,000 sum to close title on the Wayne house. Mr. Scheurer, however, handled both real estate transactions in behalf of Mrs. Walsh. Respondent was merely the attorney of record. Consequently, respondent could not have known how much his sister needed for the closing at all.

5. Most importantly, respondent's secretary, Joy Di Biaso, testified that she wrote trust account check No. 1011 for $6,000, payable to respondent, and signed his name at his direction (T3/4/1988 114). She testified further that respondent advised her to charge the $6,000 sum to the Calia closing (T3/4/1988 116) and that he informed her that the purpose of the $6,000 check was to put a deposit on his new automobile (T3/4/1988 140, 144).

It should also be noted that the Board had great difficulty in believing respondent's testimony. For example, on August 12, 1982, when respondent forwarded a $36,000 check to Mrs. Calia, he informed her by letter that he was withholding $6,000 to pay certain outstanding bills. That was untrue. By that date, Mrs.

Calia's bills had already been paid.[9] Through his counsel, respondent admitted at the Board hearing that he had lied to Mrs. Calia.

Like the committee, the Board concludes that the evidence clearly and convincingly establishes that respondent knew that he was invading the Calia funds for his personal benefit. Furthermore, assuming, for the sake of argument, that respondent's invasion of the Calia funds was inadvertent, his failure to promptly replenish the funds upon discovery of the invasion constitutes knowing misappropriation. See Matter of Brown, 102 N.J. 512 (1986).

In view of the foregoing, coupled with respondent's repeated admissions of his financial straits at the time that he discovered the invasion of the Calia funds, the Board finds by clear and convincing evidence that respondent knowingly misappropriated client funds. The Board unanimously recommends that respondent be disbarred.[10] One member concurred with the Board's finding of

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[9] On June 9, 1982, respondent paid the broker's commission; on July 28, 1982, he paid the final utility bills.

[10] The Board is aware that respondent has an extensive record with the disciplinary system. On October 12, 1971, respondent was censured for having advised witnesses in Grand Jury proceedings to avail themselves of their Fifth Amendment privilege to remain silent, knowing that their attorney had counselled them to testify fully and truthfully. In re Russell, 59 N.J. 315 (1971). On May 10, 1976, respondent received a letter of private reprimand, the tenor of which is unknown to the Board as a copy of the letter is no longer available. On May 24, 1988, respondent was publicly reprimanded for improperly withdrawing as counsel and for failing to carry out a contract of employment. Had respondent's instant ethics offense merited a sanction less severe than disbarment, the Board would have taken respondent's prior ethics history into

knowing misappropriation, but found it unnecessary to pass upon the issue of respondent's knowledge at the time that the funds were taken. That member was satisfied that respondent's failure to return the funds promptly upon discovery of their invasion presented clear and convincing evidence of knowing misappropriation at that point in time. One member did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: February 7 1990. By: Shirley O'Neill, Vice C for Raymond R. Trombadore
Chair
Disciplinary Review Board

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consideration in recommending the appropriate discipline.