SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 18-165, 18-166,
and 18-178
District Docket Nos. XII-2017-0020E,
XII-2014-0017E, XIV-2016-0194E,
and XIV-2016-0337E

In The Matters Of

Robert John Genovese

An Attorney At Law

Decision

Argued: July 19, 2018 (DRB 18-166)

Decided: November 13, 2018

Francis M. Smith appeared on behalf of the District XII Ethics Committee.

Respondent waived appearance.

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

These matters were consolidated for our review and disposition. Two matters (18-165 and 18-178) were before us on certifications of the record filed by the District XII Ethics Committee (DEC) and the Office of Attorney

Ethics (OAE), pursuant to R. 1:20-4(f). The third matter (18-166) was before us as a recommendation for a reprimand filed by the DEC.

The (amended) seventeen-count formal ethics complaint in the DEC default matter (DRB 18-165; District Docket No. XII-2017-0020E) charged respondent with violations of RPC 1.1(a) (gross neglect) (counts one and six); RPC 1.3 (lack of diligence) (count two); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) (counts three, five, and seven); RPC 1.4(b) (failure to keep the client adequately informed and to promptly reply to the client's reasonable requests for information) (count four); RPC 5.5(a)(2) (assisting in the unauthorized practice of law) (count eight); RPC 1.16(d) (failure to refund unearned fees) (count nine); RPC 8.1(a) (knowingly making a false statement of material fact in connection with a disciplinary matter) (counts ten through twelve); RPC 8.1(b) and R. 1:20-3(g)(3) (failure to cooperate with ethics authorities) (count thirteen); RPC 8.4(b) (criminal conduct that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects) (count fourteen); RPC 8.4(d) (conduct prejudicial to the administration of justice) (count fifteen); RPC 3.2 (a lawyer shall treat with courtesy and consideration all persons involved in the legal process) (count sixteen); and RPC 4.4 (presumably, subsection (a), conduct

that has no substantial purpose other than to embarrass, delay, or burden a third person) (count seventeen).

The seven-count formal ethics complaint in the OAE default matter (DRB 18-178; District Docket Nos. XIV-2016-0194E and XIV-2016-0337E) 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), RPC 8.1(a), RPC 8.4(b), and RPC 8.4(c) (counts one and two); RPC 1.15(a) and the principles of In re Wilson and In re Hollendonner, RPC 8.4(b), and RPC 8.4(c) (counts three, four, and five); RPC 1.15(a) (failure to safeguard funds) and RPC 1.15(b) (failure to promptly notify client or third person of receipt of funds and to promptly deliver the monies) (count six); and RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6) (count seven).

The six-count formal ethics complaint in the presentment matter (DRB 18-166; District Docket No. XII-2014-0017E) charged respondent with violations of RPC 5.5(a) (practicing law while ineligible) (counts one and two); RPC 1.5(b) (failure to set forth, in writing, the basis or rate of a fee) (count three); RPC 1.1(a) (gross neglect) (count four); RPC 1.3 (lack of diligence) (count five); and RPC 1.4(a) and (b) (failure to communicate with a client) (count six).

For the reasons set forth below, we determine that respondent knowingly misappropriated client and escrow funds, and recommend his disbarment to the Court.

Respondent earned admission to the New Jersey bar in 1999 and the Florida bar in 1998. During the relevant time frame, he maintained a law practice in Union City, New Jersey. Respondent has been administratively ineligible to practice law since October 21, 2016. Moreover, he was temporarily suspended, effective April 18, 2018, for failure to comply with a fee arbitration determination. In re Genovese, 232 N.J. 432 (2018).

DRB 18-165 (Docket No. XII-2017-0020E)

Service of process was proper in this matter. On October 24, 2017, the DEC sent a copy of the formal ethics complaint to respondent, by certified and regular mail, at his home address. A certified mail receipt was returned, which reflected a delivery date of October 28, 2017, and the signature of "J Genovese." The regular mail was not returned. Respondent failed to file an answer to the complaint.

On November 14, 2017, the DEC sent a "five-day" letter to respondent, by regular mail, at his home address, informing him that, unless he filed a verified answer to the complaint within five days, the allegations of the

complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). The regular mail was not returned.

On November 20, 2017, the DEC sent a copy of the amended formal ethics complaint to respondent, by certified and regular mail, at his home address. Neither the certified mail nor regular mail were returned.

On December 18, 2017, the DEC sent a second "five-day" letter to respondent, by regular mail, at his home address. The regular mail was not returned.

Because respondent had not filed an answer to the complaint, the DEC certified the record to us as a default.

The allegations of the complaint are as follows. As of July 2017, respondent's status as a New Jersey attorney was listed as "retired," and he was unemployed.

M&M Sanitation and Chelsea Sanitation (together, "M&M") are affiliated, private sanitation companies that operate in the New Jersey and New York City area. On June 12, 2015, respondent sent an e-mail to M&M, which stated

> [t]hank you for hiring our firm to provide collection services on outstanding invoices [due] to your company. We look forward to working with you to diligently and legally pursue these valid claims.

> Attached is our firm[']s initial invoice to begin work. Please provide us with all files that are ready to begin the process . . . .

Attached to the e-mail was an invoice, dated June 12, 2015. The invoice specified, among other terms, that respondent's initial retainer was $1,000, and that his fee was twenty-five percent of all debt collected through letters, and thirty-three percent of all debt collected through court appearances. In response to the e-mail, M&M's accounting representative, Alex Costa, sent respondent the files he had requested to commence performance of the collections work.

On August 26, 2015, Costa raised concerns with respondent regarding his failure to send collection letters to eight delinquent customers. In reply, respondent claimed that "all" collection letters had been sent. Thereafter, Costa made repeated demands for proof of respondent's collection work, such as copies of all letters sent and certified mailing receipts. Despite Costa's demands, respondent failed to produce proof that he had sent out "all" collection letters.

On December 22, 2015, Costa instructed respondent to file lawsuits against two delinquent customers. On January 15, 2016, respondent sent copies of two complaints to M&M, naming defendants "Vasiliki Corp. and Amali" and "Harrison Greenwich, L.L.C.," with the message "see attached." Although

respondent represented to M&M that he had filed these lawsuits, in addition to other lawsuits, with the appropriate courts, he had filed no lawsuits in behalf of M&M.

Moreover, on numerous occasions, respondent represented to M&M that he had secured default judgments against four delinquent customers. Specifically, in a November 1, 2016 e-mail to Costa, respondent stated, "[t]he files that we filed with the court have judgments. I am still awaiting from the court . . . the actual Green Card that you get on these smaller claims . . . ." When Costa demanded documentation regarding the lawsuits and judgments, respondent failed to provide it, but repeatedly insisted that he had secured the judgments and made a series of excuses for failing to provide the supporting documentation.

Meanwhile, the Court had entered an Order declaring respondent ineligible to practice law, effective October 21, 2016, for failure to comply with the Interest on Lawyers' Trust Accounts (IOLTA) program. Subsequently, on January 12, 2017, Costa inquired whether respondent was eligible to practice law, after noting that respondent was listed as "admin. ineligible" on the New Jersey Judiciary's website. On January 12 and February 1, 2017, respondent falsely represented to M&M that he was eligible to practice law.

On November 29, 2016, respondent sent M&M a "New and Original Invoice," requesting payment of $550 in costs for four lawsuits he claimed to have filed. On December 9, 2016, M&M paid the invoice. Respondent, thus, accepted legal fees from M&M, despite his ineligibility to practice law.

In the spring of 2016, Costa asked respondent whether Costa, a non-attorney, could send collection letters to delinquent customers using respondent's letterhead and his electronic signature. Respondent agreed to this arrangement, and further agreed to reduce his fee from twenty-five percent to twelve percent for debts collected under this system. Costa sent seven such letters to delinquent customers, threatening the filing of a lawsuit if payment were not promptly made. Respondent failed to review any of the letters or underlying files before the letters were sent.

On April 7, 2017, respondent and a representative for M&M exchanged text messages, wherein M&M informed respondent that the attorney-client relationship was on "life support," and that one of the owners of the company was demanding a $500 refund and considering the filing of an ethics grievance against him. In turn, respondent justified his billing of M&M, advised the company of its option to file a fee arbitration action or ethics grievance, stated that "this relationship is over," and criticized the owners as "not savvy enough or [ambitious enough]" to research their legal options, calling their threats a

waste of time. Respondent represented that he would refund an "overage" fee of $100 to M&M, but failed to do so.

Ultimately, on April 7, 2017, M&M filed an ethics grievance against respondent, who, on June 6, 2017, replied that he had not charged M&M fees for the filing of lawsuits or any litigation services. During a September 29, 2017 DEC interview, he made the same claims, despite having billed M&M for lawsuits he had purportedly filed, falsely blaming M&M's accounting representative for "induc[ing] him to be less than honest" in his billings. During the same interview, respondent also denied having falsely represented to M&M that he was eligible to practice law.

Between April and October 18, 2017, respondent did not communicate with M&M. Then, on October 19, 2017, respondent threatened M&M, stating that he intended to notify a Union County municipality and the "state" of M&M's purported wrongdoing. The ethics complaint alleged that these matters were protected by attorney-client privilege and that respondent's text message "was designed to intimidate, harass, retaliate, and burden [M&M]" for filing the ethics grievance against respondent, and thus, constituted witness tampering, in violation of N.J.S.A. 2C:28-5(a).

On September 29, October 6, and October 20, 2017, the DEC directed respondent, pursuant to R. 1:20-3(g)(3), to produce his file in connection with his representation of M&M. Respondent failed to produce his file.

DRB 18-178 (Docket Nos. XIV-2016-0194E and XIV-2016-0337E)

Service of process was proper in this matter. On February 14, 2018, the OAE sent a copy of the formal ethics complaint to respondent, by certified and regular mail, to both his office address and home address on file with the New Jersey Lawyers' Fund for Client Protection (CPF). The certified mail receipts that were returned reflected illegible signatures. The regular mail was not returned. Respondent failed to file an answer to the complaint.

On February 20, 2018, the OAE effected service of the complaint by publication, in both the Star-Ledger and the New Jersey Law Journal.

On March 27, 2018, the OAE received a letter from respondent, acknowledging receipt of the complaint, requesting an extension of time to provide an answer, and claiming he was in poor health and had moved twice. By letter dated April 12, 2018 and sent by certified mail to respondent's home address, the OAE granted respondent's request for additional time, with a new deadline set of April 26, 2018. A certified mail receipt was returned, which reflected the signature of "J Genovese."

Because respondent had not filed an answer to the complaint, the OAE certified the record to us as a default.

The allegations of the complaint are as follows. During the time frame relevant to this matter, respondent maintained an office for the practice of law in Union, New Jersey. On April 11, 2016, the Assignment Judge for the New Jersey Superior Court, Union County, appointed attorneys John Paragano and Peter Rozano to jointly serve as temporary attorney-trustees for respondent's law practice. That appointment was made pursuant to R. 1:20-19(a)(2), which provides for such trustees, for up to six months, when "an attorney is otherwise unable to carry on the attorney's practice . . . so that clients' matters are at risk."

On April 14, 2016, the OAE "received information from" attorney-trustee Paragano of "possible" misappropriation of funds in respect of respondent's trust account. On April 19, 2016, the attorney-trustees issued a report to the Union County Assignment Judge, "describing the disarray of respondent's law practice."

Respondent maintained both his attorney business account (ABA) and attorney trust account (ATA) with Connect One Bank. The OAE obtained respondent's ABA and ATA records via subpoena, and docketed an ethics investigation after discovering that, on January 28, 2016, respondent had

overdrawn his ATA by $14.76, incurring a $35 overdraft fee.[1] Initially, the OAE observed that respondent overdrew his ATA in respect of his client and mother, Sue Anne Genovese, in connection with a real estate closing. The OAE investigation uncovered similar misconduct in additional client matters.

Count One - The Carlos Solarte Matter

In April 2013, Carlos Solarte retained respondent in connection with his purchase of real estate in Union, New Jersey. The contract for the real estate transaction provided for an additional deposit, in the amount of $6,317.50, to be paid by Solarte and held in trust by respondent "until closing of title." Although Foundation Title, LLC served as settlement agent, the contract specifically stated that respondent would serve as escrow agent and would use his ATA for the additional deposit. The executed HUD-1 for the transaction, dated October 31, 2013, credits the additional deposit paid by Solarte, on line 201.

Specifically, on April 24, 2013, Solarte made the $6,317.50 additional deposit payment to respondent via a personal check, containing the notation "deposit." On May 2, 2013, respondent deposited that check into his ABA, not his ATA, contrary to the terms of the contract.

[1] Connect One Bank failed to report this overdraft to the OAE, as required.

That same date, respondent issued ABA check #24839, in the amount of $4,817.50, payable to "cash," and deposited it in his ATA in behalf of Solarte. Respondent, thus, failed to deposit $1,500 of the additional deposit provided by Solarte into his ATA. Pursuant to the final HUD-1, respondent was due a fee of $1,300, at the time of closing, payable by Solarte.

On the closing date, October 31, 2013, respondent issued ATA check #101, in the amount of $6,317.50, payable to Foundation Title, representing the funds for Solarte's additional deposit. That same date, he also issued ATA check #102, in the amount of $300, payable to himself and containing the notation "Solarte fee." The next day, Foundation Title negotiated ATA check #101, and respondent negotiated ATA check #102, creating an $1,800 trust account shortage in respect of Solarte and, thus, invading trust funds held in respondent's ATA in behalf of other clients.

At the closing, Foundation Title issued its check #38867, in the amount of $1,300, payable to respondent and containing the notation "Buyer Attorney Fee." On November 1, 2013, respondent negotiated that check, depositing it in his ATA, thus, reducing the trust account shortage for Solarte to $500.

During an April 11, 2017 OAE interview, respondent falsely claimed that the Solarte purchase was a short sale, and that his agreed legal fee had been $1,500, whether or not the transaction closed. Respondent, thus,

maintained that his initial retention of $1,500 of Solarte's additional deposit was proper and authorized. He claimed that he could not produce the fee agreement, "because his files, stored in Paragano's office basement, were in disarray and incomplete." Respondent could not, however, explain why, then, he had ultimately forwarded $6,317.50, the exact amount of Solarte's additional deposit, to Foundation Title for the closing. Nor could he explain why, on the closing date, he had issued the $300 ATA check to himself and noted it as "Solarte fee."

During the same OAE interview, respondent further claimed that the $1,300 check he received from Foundation Title, on the closing date, was his legal fee for the Solarte matter, in addition to the $1,500 he had retained from Solarte's $6,317.50 additional deposit. Respondent, however, could not explain why he deposited the $1,300 check from Foundation Title in his ATA.

Respondent did not have authorization from either Solarte or the seller to use the $6,317.50 in escrow funds earmarked as the additional deposit. On May 2, 2013, the date respondent deposited Solarte's $6,317.50 personal check for the additional deposit into his ABA, respondent knew that he was required to safeguard that entire amount in his ATA, pursuant to the sales contract for the transaction. Similarly, when, on that same date, respondent took $1,500

from those funds, he knew he was taking his legal fee almost six months prior to the date of closing, when he would be entitled to that fee.

Moreover, no documents provided by respondent or Foundation Title in connection with the Solarte transaction supported respondent's claim that he was entitled to the $1,500, in addition to the $1,300 legal fee memorialized on the final HUD-1, or that he was authorized to retain $1,500 from Solarte's $6,317.50 additional deposit. Similarly, no evidence in the record supports respondent's retention of the $300 from Solarte's additional deposit, via the ATA check he wrote to himself and noted as "Solarte fee."

Respondent, thus, was aware that his May 2, 2013 ATA transactions created a $1,500 trust account shortage in respect of Solarte and, thus, invaded trust funds held in respondent's ATA in behalf of other clients. He also was aware that the additional $300 he took from Solarte's escrow funds in October 2013, couched as his legal fee for the closing, increased that trust account shortage to $1,800, and that he already had taken more than his legal fee, back in May.

Based on respondent's November 22, 2016 reply to the OAE's grievance, he understood his obligations, as an escrow agent, in respect of real estate transactions, and claimed that he always satisfied those obligations. Respondent's November 1, 2013 ATA deposit of Foundation Title's check to

him, in the amount of $1,300, thus, "is evidence that he knew he had previously misappropriated $1,800 of Solarte's funds."

The complaint alleged that respondent "knowingly misappropriated Solarte's escrow funds by paying himself improper, unauthorized[,] and advanced fees of $1,500 and $300 prior to the closing[,] in addition to his authorized $1,300 legal fee that he was due at closing."

Count Two - The Ruzdhi Molic Matter

In August 2013, Ruzdhi Molic retained respondent in connection with his purchase of real estate in Elizabeth, New Jersey. Foundation Title, LLC served as settlement agent for the transaction. The HUD-1 for the transaction, which closed on December 23, 2013, credits a $40,400 deposit to Molic.[2] On August 10, 2013, Molic issued a $5,000 personal check to respondent, containing no notation.[3] On August 26, 2013, respondent deposited that check into his ABA, not his ATA, despite the fact that the $5,000 constituted escrow funds. That same date, respondent deposited two checks, totaling $35,500, from Sovereign Bank in his ATA. Pursuant to the final HUD-1, respondent

[2] There is a $400 discrepancy in the record in respect of this deposit.
[3] Respondent's later disbursements in behalf of the transaction clearly established, however, that the $5,000 check constituted Molic's deposit.

was due a fee of $1,100, plus $200 in additional costs, at the time of closing, payable by Molic.

On the closing date, December 23, 2013, respondent deposited $1,225 in cash plus a $4,000 check, from his mother, Sue Anne Genovese, into his ATA. That same date, respondent issued ATA check #104, in the amount of $40,500, payable to Foundation Title, representing the funds for Molic's deposit and noted as "Molic Dep." The $5,225 in deposits "enabled respondent" to cover the funds necessary for Molic's deposit without causing an overdraft of his ATA. Specifically, the day before, respondent's ATA balance was only $35,279.24.

On December 26, 2013, Foundation Title negotiated ATA check #104, which, according to the complaint, created a $5,000 trust account shortage in respect of Molic, thus invading trust funds held in respondent's ATA in behalf of other clients.

At the closing, Foundation Title issued its check #41903, in the amount of $1,300, payable to respondent and containing the notation "Attorney Fees." That same date, respondent negotiated that check, depositing it in his ABA.

During an October 11, 2016 OAE interview, respondent claimed that he had received a loan from his mother, in an amount between $6,000 and $10,000, which he admitted he had deposited in his ATA. Respondent could

not recall the date of that loan. Respondent's mother told the OAE that she believed the loan was for $6,000, and was intended to pay respondent's personal expenses, but she could not recall the date that she made the loan. Respondent "falsely stated that the loan from his mother was deposited into his ATA because he wanted to make sure the money was used to pay for specific personal expenses, such as child support, his car loan[,] and office rent." Respondent maintained that, if he had deposited the loan proceeds in his ABA, "they would be too readily accessible to him" for purposes other than their intended use. The OAE investigation revealed that respondent "did not begin to issue payments for the aforementioned personal expenses until August 2014, eight months after" he deposited the loan proceeds from his mother. Moreover, respondent's bank records reveal that respondent "was making regular child support payments, car loan payments and office rent payments from his ABA from December 2013 through September 2014."

During an April 11, 2017 OAE interview, respondent recalled representing Molic in the transaction, but could not remember where the real estate was located or the amount of his legal fee. Respondent could not explain why he had deposited Molic's $5,000 check, representing escrow funds, in his ABA.

Respondent did not have authorization from either Molic or the seller to use the $5,000 in escrow funds earmarked as Molic's deposit. The attorney for the seller confirmed this fact, providing the OAE with e-mails from the transaction, whereby Molic designated respondent as the escrow agent for the deposit, and the seller's attorney instructed respondent not to release the funds without either the seller's consent or a court order. Therefore, when respondent deposited Molic's $5,000 personal check toward the deposit into his ABA, respondent knew that he was required to safeguard that entire amount, plus the $35,000 in Sovereign Bank funds, in his ATA.

Respondent, thus, knowingly misappropriated Molic's escrow funds by depositing them in his ABA instead of ATA, and used these funds without authorization. Respondent subsequently deposited the proceeds of the loan from his mother in his ATA "to replace the $5,000 that [he] had misappropriated" from Molic's escrow funds.

Count Three - The Lillian Pichardo Matter

In August 2013, Lillian Pichardo retained respondent in connection with her purchase of real estate in Bloomfield, New Jersey. Foundation Title, LLC served as settlement agent for the transaction. The HUD-1 for the transaction, which closed on July 2, 2015, credits a $6,500 deposit to Pichardo. On January

28, 2014, North Jersey Federal Credit Union issued a $6,550 check payable to respondent and/or Pichardo, representing Pichardo's deposit funds.[4] The next day, respondent deposited that check into his ATA. Prior to the deposit, the balance of the ATA was $4.24. Pursuant to the final HUD-1, respondent was due a fee of $1,500, at the time of closing, payable by Pichardo.

Respondent did not deposit additional funds in his ATA during February 2014. On February 6, 2014, he issued ATA check #105, in the amount of $1,550, payable to himself. Six days later, he deposited check #105, which he noted as "Pichardo – Pmt," into his ABA, reducing Pichardo's escrowed funds to approximately $5,000. At the time of this transaction, respondent's ATA held neither funds for any other client nor accumulated legal fees.

Respondent knew that, between January 28, 2014, the date of Pichardo's deposit of earnest monies, and July 2, 2015, the closing date of Pichardo's purchase, he was obligated to safeguard Pichardo's $6,500 in escrow funds in his ATA. Yet, on February 12, 2014, the balance of respondent's ATA was only $3,504.24, which was $2,995.76 less than he was required to hold, inviolate, for Pichardo. By January 22, 2015, the balance of respondent's ATA had been reduced to only $900.24, which was $5,599.76 less than he was required to hold, inviolate, for Pichardo.

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[4] There is a $50 discrepancy in the record in respect of this deposit.

On the closing date, July 2, 2015, respondent made a cash deposit in the amount of $4,849, from an unknown source, into his ATA. That same date, respondent issued ATA check #125, in the amount of $6,500, payable to Foundation Title, representing the funds for Pichardo's deposit and noted as "Manchero – Dep."[5] The cash deposit "permitted respondent to issue, without causing an overdraft, check #125 in behalf of Pichardo. On July 7, 2015, Foundation Title negotiated ATA check #125.

At the closing, Foundation Title issued its check #12787, in the amount of $1,500, payable to respondent and containing the notation "Buyer Attorney Fee." That same date, respondent negotiated that check, depositing it in his ATA, "thereby returning escrow funds to [his] ATA."

During an April 11, 2017 OAE interview, respondent could not explain why, on February 6, 2014, he issued ATA check #105, in the amount of $1,550, payable to himself, reducing Pichardo's escrowed funds to approximately $5,000. Further, he could not explain why he had deposited the check for his legal fee, issued by Foundation Title in connection with the July 2, 2015 closing of Pichardo's transaction, in his ATA.

[5] Pichardo also used "Manchero" as her surname, signing some documents as "Pichardo-Manchero."

The seller's attorney confirmed to the OAE that respondent did not have authorization from the seller to use the $6,500 in escrow funds earmarked as Pichardo's deposit. Respondent did not have Pichardo's authorization to use those funds. Respondent, thus, knowingly misappropriated Pichardo's escrow funds "via unauthorized disbursements unrelated to" her real estate transaction.

Count Four - The Thomas C. Basile Matter

In 2015, Thomas C. Basile retained respondent in connection with his purchase of real estate in Elizabeth, New Jersey. Foundation Title, LLC served as settlement agent for the transaction. The HUD-1 for the transaction, which closed on July 2, 2015, credits a $5,000 deposit to Basile. On April 2, 2015, Weichert Realtors issued a $1,000 check, payable to respondent, presumably, representing a seller deposit or a tenant security deposit. On April 14, 2015, Hudson City Savings Bank issued a $5,000 check, payable to respondent, representing a portion of Basile's deposit funds. On April 21, 2015, respondent deposited the $6,000 in deposit checks into his ATA. Pursuant to the final HUD-1, respondent was due a fee of $1,250, at the time of closing, payable by Basile.

On April 28, 2015, respondent issued ATA check #121, in the amount of $1,700, payable to himself, reducing Basile's escrowed funds to $4,300. That

same date, he deposited check #121, which he noted as "Atty Fee – Basile," into his ABA.

On the date of the closing, Foundation Title issued its check #12780, in the amount of $1,250, payable to respondent and containing the notation "Buyer Attorney Fee." That same date, respondent negotiated that check, depositing it in his ATA, thereby increasing the escrow funds held in behalf of Basile to $5,500. Respondent then issued ATA check #123, in the amount of $5,000, payable to Foundation Title, representing the funds for Basile's deposit and noted as "Basile – Dep." Respondent also issued ATA check #124, in the amount of $1,000, payable to Basile, representing the funds escrowed as seller's deposit. On July 7, 2015, Foundation Title negotiated ATA check #123, reducing the funds held in respondent's ATA in behalf of Basile to $550. On July 8, 2015, Basile negotiated ATA check #124, creating a $450 trust account shortage in respect of his trust funds and, thus, invading trust funds held in respondent's ATA in behalf of other clients.

During an April 11, 2017 OAE interview, respondent could not explain why, on April 28, 2015, he had issued ATA check #121, in the amount of $1,700, payable to himself, reducing Basile's escrowed funds to $4,300. Further, he could not explain why he had deposited the check for his legal fee,

issued by Foundation Title in connection with the July 2, 2015 closing of Basile's transaction, in his ATA.

Respondent did not have authorization from either Basile or the seller to use the $5,000 in escrow funds earmarked as Basile's deposit, as the seller's attorney confirmed to the OAE. Respondent, thus, knowingly misappropriated Basile's escrow funds "when he improperly removed $1,700 in entrusted funds from" his ATA more than two months prior to the scheduled closing date.

Count Five - The Teresa Meyer Matter

In October 2015, Teresa Meyer retained respondent in connection with her purchase of real estate. Reagan Jack Real Estate, LLC served as settlement agent for the transaction.[6] On October 1, 2015, Meyer issued a $73,000 personal check, payable to respondent's ATA and noted as "down payment," representing her earnest money deposit. The next day, respondent deposited the $73,000 in his ATA. Prior to that deposit, the balance of respondent's ATA was $0.24. Moreover, between July 8 and October 1, 2015, respondent had no other client funds in his ATA.

[6] The OAE was not able to locate Reagan Jack Real Estate, LLC during its investigation. Consequently, it was unable to obtain the title company's file for the Meyer transaction. Respondent could not produce his file for the Meyer transaction.

On October 5, 2015, respondent issued ATA check #221, in the amount of $2,500, payable to himself and noted as "attorney fee," and deposited it in his ABA, reducing Meyer's escrowed funds to $70,500. On November 9, 2015, respondent issued ATA check #222, in the amount of $1,000, payable to "cash." Although respondent endorsed that check, he never negotiated it.

On November 25, 2015, presumably the date of the closing, respondent issued ATA check #224, in the amount of $72,000, payable to Reagan Jack Real Estate, LLC, representing the funds for Meyer's deposit.[7] On November 27, 2015, the title company negotiated ATA check #224, creating a $2,500 shortage in respect of Meyer and, thus, invading trust funds that respondent was then holding in his ATA in behalf of his mother, for a separate real estate transaction.

On January 28, 2016, respondent deposited $2,000 cash in his ATA.

During an April 11, 2017 OAE interview, respondent could not explain why, on October 5, 2015, he issued ATA check #221, in the amount of $2,500, payable to himself, reducing Meyer's escrowed funds to $70,500. Further, he could not explain why, on November 9, 2015, he had issued ATA check # 222,

[7] The complaint does not explain why this check was not for $73,000, the aforementioned earnest money deposit amount.

in the amount of $1,000, payable to "cash." Finally, he could not explain why, on January 28, 2016, he had made the $2,000 cash deposit to his ATA.

Respondent did not have authorization from either Meyer or the seller to use the $73,000 in escrow funds earmarked as Meyer's deposit. Respondent, thus, knowingly misappropriated Meyer's escrow funds "by paying himself an improper, unauthorized[,] and advance attorney fee of $2,500" prior to the scheduled closing date.[8]

Count Six - The Frank Talarico Matter

Frank Talarico retained respondent in connection with his purchase of real estate in Elizabeth, New Jersey, which was scheduled to close on September 27, 2013. Respondent also served as settlement agent for the transaction. The final HUD-1 for the transaction indicated that $300 in settlement funds was escrowed in respondent's ATA and earmarked for payment of water and sewer obligations; respondent, however, never disbursed settlement funds in respect of these obligations.

[8] The OAE also cites the check for $1,000 respondent issued as evidence of a Hollendonner violation. Because respondent never negotiated that check, however, we do not find this conduct to constitute evidence of a Hollendonner violation.

As of December 31, 2013, respondent's ATA balance was only $4.24, and, by July 8, 2015, the balance had been reduced to $0.24. On January 28, 2016, respondent's ATA was overdrawn by $49.76. Respondent, as the settlement agent for Talarico's transaction, thus, failed to safeguard the $300 in trust funds earmarked for payment of the water and sewer obligations associated with Talarico's closing, and, further, failed to promptly disburse those funds, as was his duty.

Count Seven – Recordkeeping Violations

Respondent failed to maintain financial records for his ATA and ABA, as required pursuant to R. 1:21-6. Specifically, respondent failed to maintain trust receipts and disbursements journals and individual client ledger cards; perform three-way monthly reconciliations; and sufficiently detail ATA deposit slips. Moreover, respondent improperly issued ATA checks to "cash;" did not note client matters on ATA checks; made improper electronic funds transfers; commingled personal funds in his ATA; failed to maintain ATA and ABA records for seven years; did not properly designate his ABA; and failed to maintain business receipts and disbursements journals.

DRB 18-166 (Docket No. XII-2014-0017E (Presentment matter))

The following facts are taken from the December 1, 2016 joint stipulation of the parties, wherein respondent admitted having committed three ethics violations.

Respondent was declared administratively ineligible by the Court, on September 24, 2012, for failure to comply with CPF registration and fee obligations. He was declared administratively ineligible by the Court again, in September 2013, for the same reason. Despite his ineligible status, respondent engaged in the practice of law on at least two occasions. Specifically, on February 11, 2013, on behalf of a client, he filed a notice of appeal of a domestic violence restraining order. Then, on November 5, 2013, he filed a motion to vacate a domestic violence restraining order, in behalf of a client. Respondent admitted, therefore, that he twice practiced law while ineligible, in violation of RPC 5.5(a).

Further, in March 2013, respondent agreed to represent Hesham Fakry in a matrimonial matter, for a $900 fee, but failed to provide Fakry with a written retainer agreement. In so doing, respondent violated RPC 1.5(b) in two respects. First, he had not previously represented Fakry, and, thus, was required to communicate, in writing, the basis or rate of the fee. Second, given the nature of Fakry's matter, respondent was required to comply with the

additional retainer provisions of the Family Court Rules, including R. 5:3-5, but failed to do so.

* * *

The facts recited in the formal ethics complaints support all but one of the charges of unethical conduct set forth therein. In the DEC default matter, respondent was retained to provide collection services for M&M, a sanitation company. He failed to diligently represent M&M in respect of those matters or to perform the work he was retained to complete. Worse, he made multiple misrepresentations to the client in an attempt to conceal his neglect of the collection work, including falsely claiming that he had filed lawsuits and obtained default judgments against delinquent M&M customers. He then accepted legal fees for the phantom services and failed to remit unearned fees to the client. When directly questioned, he also lied to the client about his administrative ineligibility to practice law for failure to comply with IOLTA obligations.

Respondent then allowed M&M's accounting representative, Costa, to directly send collection letters to delinquent customers, using his letterhead and electronic signature, without reviewing the letters or corresponding files.

After M&M filed an ethics grievance against him, respondent made misrepresentations to the DEC regarding his acceptance of legal fees, and

blamed M&M's employees for deceitful behavior in an attempt to avoid responsibility for his own misconduct. He also failed to produce his client files, as directed by the DEC. Moreover, while the ethics charges were pending, respondent made inappropriate threats to M&M in an attempt to retaliate for M&M's filing of the ethics grievance.

In the presentment matter, respondent twice practiced law while administratively ineligible for failure to comply with CPF obligations. He also failed to provide a family court client with a retainer agreement.

Respondent, thus, violated the following RPCs in respect of these matters: RPC 1.1(a); RPC 1.3 (two client matters); RPC 1.4(b) (two client matters); RPC 1.5(b); RPC 1.16(d); RPC 3.2; RPC 4.4(a); RPC 5.5(a) (two instances); RPC 5.5(a)(2); RPC 8.1(a) (three instances); RPC 8.1(b) and R. 1:20-3(g)(3); RPC 8.4(b); RPC 8.4(c) (three instances); and RPC 8.4(d). We dismissed the RPC 1.4(a) charge as that subsection applies to prospective clients and not to existing clients.

The charges of knowing misappropriation levied against respondent in the OAE default matter, however, beckon disbarment, and, thus, are the primary focus of our attention.

The facts recited in that formal ethics complaint support all but one of the charges of knowing misappropriation set forth therein.[9] Respondent's failure to file a verified answer to the complaint is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1). Notwithstanding that Rule, each charge in an ethics complaint must be supported by sufficient facts for us to determine that unethical conduct occurred.

The record contains clear and convincing evidence that respondent knowingly and repeatedly misappropriated client and escrow funds, representing deposits in real estate transactions. Respondent used his attorney trust account as he saw fit, with no regard for his duty to protect the interests of his clients or third parties, or for the bright-line ethics rules governing attorney trust accounts. He then either was unable to explain his conduct to the OAE or lied to the OAE, resulting in the filing of the formal ethics complaints. Ultimately, respondent defaulted in respect of those complaints.

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

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[9] As noted previously, because respondent never cashed the $1,000 check he issued to himself in respect of the Meyer matter, we do not sustain that charge of knowing misappropriation.

> 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, 81 N.J. 451, at 455 n.1 (1979)].

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, the record must contain 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 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 . . . " Ibid. at 28-29.

In this case, the record is replete with proof of respondent's knowing misappropriation of client and escrow funds.

Specifically, in April 2016, the Union County Assignment Judge appointed attorney-trustees to review respondent's law practice in order to protect his clients. One of those trustees, John Paragano, informed the OAE of respondent's potential misappropriation of attorney trust funds. In response, the OAE opened an investigation and subpoenaed respondent's ABA and ATA banking records. Those records demonstrate a pattern of respondent's unauthorized use of client and escrow funds, in real estate matters, for which he has provided no defense.

Indeed, in all six of the client matters addressed in the complaint,

respondent received escrow funds and, instead of holding them inviolate, as was his duty, he used them for his own purposes, creating shortfalls in his trust account, and often invading other client funds to satisfy his escrow obligations. In none of those instances did he have permission from the parties interested in those funds to use them for any other purpose. Moreover, in every instance, the timing of respondent's actions clearly and convincingly established that he was well aware that he was using escrow and/or client funds, often making last-minute deposits to replenish the ATA in order to cover the disbursements required on the day of closing. Thus, respondent knowingly misappropriated both escrow and client funds, in violation of RPC 1.15(a), RPC 1.15(b), RPC 8.4(c), and the principles of In re Wilson, 81 N.J. 451 and In re Hollendonner, 102 N.J. 21. Moreover, respondent's misapplication of funds entrusted to him as a fiduciary further violated RPC 8.4(b), as charged in the complaint.

In an attempt to conceal his misconduct, respondent repeatedly lied to the OAE about his entitlement to use the funds he was obligated to protect, in violation of RPC 8.1(a).

Finally, respondent's failure to comply with the recordkeeping requirements of R.1:21-6 violated RPC 1.15(d).

Respondent's brazen use of his ATA mirrors the facts of In re Gifis, 156 N.J. 323 (1998). 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, 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. See also In re Mininsohn, 162 N.J. 62 (1999) (attorney disbarred for removing legal fees from real estate deposits before the closing took place; attorney failed to offer evidence to sustain his claimed belief in the existence of a "cushion" of his own funds in his trust account).

Like the attorney in Gifis, respondent flagrantly used real estate deposits for his own purposes when he was duty-bound to hold those escrow funds, inviolate, in behalf of clients and third parties. He has provided no effective defense to his conduct, but, rather, has defaulted in respect of these very serious charges. Accordingly, because respondent knowingly misappropriated client and escrow funds, disbarment is the only appropriate sanction, pursuant to the principles of Wilson and Hollendonner. Therefore, we need not address the appropriate quantum of discipline for the additional ethics violations sustained in these matters.

Member Boyer 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 Matters of Robert John Genovese
Docket Nos. DRB 18-165, 18-166, and 18-178

Decided: November 13, 2018

Disposition: Disbar

Members	Disbar	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer			X
Gallipoli	X		
Hoberman	X		
Joseph	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	8	0	1

Ellen A. Brodsky
Chief Counsel