

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-407
District Docket Nos. XIV-2017-0610E;
XIV-2018-0049E; and XIV-2018-0211E

In the Matter of
Fernando J. Regojo
An Attorney at Law

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Decision

Decided: July 23, 2019

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

This matter was before us on a certification of the record filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The 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), RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6), RPC 8.1(b) (failure to cooperate with disciplinary authorities), RPC 8.4(b) (criminal act that reflects adversely

on the lawyer's honesty, trustworthiness or fitness as a lawyer), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

For the reasons set forth below, we recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1981. On November 14, 2001, respondent received a reprimand when he failed to promptly pay funds to third parties in a real estate transaction in one matter; negligently misappropriated client funds in ten matters; and failed to maintain proper records. The Court required respondent to submit quarterly trust account reconciliations to the OAE for two years. In re Regojo, 170 N.J. 67 (2001).

On July 22, 2004, respondent received a second reprimand for gross neglect, lack of diligence, failure to communicate with a client, and negotiating a legal malpractice settlement with his client without advising the client to seek independent counsel. In re Regojo, 180 N.J. 523 (2004).

On December 6, 2005, the Court imposed a third reprimand for respondent's negligent misappropriation, commingling personal and client funds, failure to promptly deliver funds to clients, and recordkeeping violations. The Court further required him to retain a certified public accountant and submit quarterly reconciliations of his attorney accounts to the OAE for two years. In re Regojo, 185 N.J. 395 (2005).

On February 7, 2006, respondent received a censure for lack of diligence and gross neglect in a litigation matter. In re Regojo, 186 N.J. 66 (2006).

On April 23, 2018, the Court temporarily suspended respondent for failing to cooperate with the OAE in the instant matters. In re Regojo, 233 N.J. 43 (2018). He remains suspended to date.

Service of process was proper in this matter. On July 23, 2018, the OAE sent a copy of the complaint, by certified and regular mail, to respondent at his former law office and two home addresses.

On July 27, 2018, the OAE sent a copy of the complaint to respondent at a new law office address and an updated home address by certified and regular mail.

The certified mail to the new law firm address was returned marked "Undeliverable" and "Unable to forward." The regular mail was not returned. The certified mail sent to one home address was returned, but the regular mail was not. The certified mail sent to the other home address was returned "Refused - Individual No Longer Lives at This Residence." The regular mail was not returned.

The certified mail to respondent's new office address was returned marked "Return to Sender Insufficient Address Unable to Forward." The regular mail was returned with similar markings. The certified mail sent to the

new home address was returned after a notice was left on July 30, 2018. The regular mail was not returned.

On October 10, 2018, the OAE sent a letter to respondent at the new home address, also by certified and regular mail, informing him that, if he did not answer the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record in the matter would be certified directly to us for imposition of discipline, and the complaint would be amended to include a charge of a violation of RPC 8.1(b). The certified mail was returned marked "Unclaimed" and the regular mail was not returned.

As of December 7, 2018, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

We now turn to the allegations of the complaint.

Respondent, a sole practitioner, maintained attorney accounts at Bank of America (BOA), as follows: an attorney trust account, closed on December 12, 2014, with a charge off in the amount of (-\$286,305.81); an attorney business account, closed on April 8, 2015, with a charge off in the amount of (-\$368.63); and a personal checking account, closed on April 6, 2018, with a charge off in the amount of (-\$2,028.71).

According to the complaint, in respect of two real estate transactions and the sale of a business, respondent knowingly misappropriated escrow funds required to be held inviolate in an attorney trust account, pending the completion of the transactions, including post-closing approvals from certain New Jersey governmental entities. Moreover, although the attorney recordkeeping rules required respondent to maintain an attorney trust account, he failed to do so after BOA closed his trust account on December 12, 2014. Thereafter, respondent improperly deposited entrusted funds in his BOA personal checking account, and knowingly misappropriated them, as discussed in detail below.

In May 2016, respondent represented Sergio Pereda in the sale of his business, Carniceria La Hacienda, for \$295,000, to Vishnu and Hilesh Patel, owners of Sri Ramishawari, LLC (the LLC). The Patels gave respondent a \$30,500 deposit for the purchase, in the form of two checks, each made payable to respondent. A May 24, 2016 check for \$15,250 contained the following entry on the memo line: "Deposit for Carniceria La Hacienda." A May 25, 2016 check for \$15,250 contained a memo entry, "Deposit for Purchase."

On May 26, 2016, respondent deposited the two checks in his personal checking account, not an attorney trust account. Months later, on March 9,

2017, the New Jersey Department of the Treasury, Division of Taxation (the Division) sent the LLC a letter-notice requiring a \$20,000 escrow for potential tax liabilities. At the April 5, 2017 settlement, the Patels gave respondent a cashier's check for \$20,000, payable to "Fernando Regojo Attorney Trust Account," which was to be held in escrow for taxes.

Respondent deposited the cashier's check in his personal checking account. On May 12, 2017, the Division sent a "Demand for Escrow Payment From Transferee," seeking payment of \$189.36 within fifteen days. The Division authorized the release of that amount from the escrow funds. Despite that information, respondent failed to disburse any funds to the Division and misrepresented to Pereda that the tax liability for the sale was \$12,000, not \$189.36.

Pereda then contacted the Division on his own about the outstanding taxes, and received an August 25, 2017 letter indicating that the amount due was \$189.36, as stated in its May 12, 2017 demand letter. Pereda immediately paid the Division \$189.36 from his own funds.

On receipt of the taxes from Pereda, the Division sent him two letters dated August 29 and September 6, 2017, acknowledging receipt of the tax payment and as of September 6, 2017, authorizing the release of the remaining escrow funds. Thus, Pereda made repeated requests of respondent for the

release of \$50,500 — the \$30,500 deposit and \$20,000 tax escrow — all of which represented his proceeds from the sale. Respondent failed to disburse the escrow funds to his client.

The OAE's investigation revealed that respondent had depleted those funds. Specifically, on September 8, 2017, respondent's personal checking account balance was \$43,484.05, or about \$7,000 less than the \$50,500 he was required to hold for Pereda's matter. Although the \$50,500 belonged to Pereda, respondent continued to use his client's funds for personal purposes unrelated to the sale, until December 7, 2017, when the balance in his personal checking account reached (-\$13.46). Pereda never authorized respondent to use his funds for any purpose other than for taxes on the sale of his business. Respondent never disbursed any of the \$50,500 to Pereda. Ultimately, BOA closed respondent's personal checking account, in April 2018, with a negative balance.

In early 2017, respondent represented Ignacio Barba in the sale of a multi-unit property in Union City, New Jersey, to Subha Mukherjee and Vaibav D. Joshi, for \$514,000. The buyers provided two \$26,250 checks, totaling \$52,500, representing the deposit. The checks, dated January 7, 2017, were made payable to "Fernando Regojo Attorney Trust Account," and had a notation on the memo line with the property's street address.

Again, respondent deposited the escrow monies in his personal checking account, rather than an attorney trust account. On April 7, 2017, the Division required the parties to escrow \$76,106 on account of potential tax liabilities for the sale.

On April 19, 2017, Barba gave respondent a check for \$23,606, representing the difference between the \$52,500 that the buyers had paid, and the \$76,106 required for the tax escrow. The check bore a memo notation, "Add Bulk Sale Deposit Escrow." The next day, respondent deposited that check in his personal checking account, instead of an attorney trust account.

On May 15, 2017, the Division notified respondent that the tax liability for the sale was \$17,757, and instructed him to release that amount from escrow within fifteen days. Respondent, however, failed to do so.

Five months later, on October 18, 2017, Barba sent respondent a letter authorizing him to disburse \$17,757 to the Division for taxes. Respondent neither disbursed the funds nor kept them intact. At the time, his checking account had a \$29,873.32 balance, representing a \$46,232.68 shortage of the funds he was holding on behalf of Barba.

In June 2016, respondent represented Jose and Bertha Torres in their real estate purchase from Kirwan Properties II, LLC (Kirwan), in North Bergen. The sale price was \$600,000, of which \$60,000 was to be escrowed for

potential liability in the event that the New Jersey Department of Environmental Protection (DEP) required remediation of an oil tank on the premises. The parties' agreement further called for respondent to serve as escrow agent, and to escrow the funds in his attorney trust account.

At the October 27, 2016 closing, Guardian Title Services, LLC, issued a \$60,000 check to "Fernando Regojo, Esq. Trust Account," with a memo notation "Oil Tank Remediation Escrow." On November 1, 2016, respondent deposited the escrow check in his personal checking account, instead of an attorney trust account. According to the complaint, on January 9, 2017, respondent's personal checking account held just \$71,758.99, at a time when he was required to be holding \$60,000 for the Kirwan matter and \$50,500 for the Pereda matter, for a shortage of \$38,741.01.

On May 17, 2017, the DEP issued a "no action" letter for the property. Therefore, under the terms of the parties' escrow agreement, respondent was obligated to release the oil-tank escrow to Kirwan. On June 9, 2017, however, respondent's personal checking account contained only \$68,755.54, a sum insufficient to account for the total \$186,606 required to be held in escrow for Pereda, Barba, and Kirwan.

According to the complaint, from the time that respondent deposited the oil tank escrow check in his personal checking account to April 9, 2018, the date that BOA closed the account, no disbursements were made to Kirwan.

The complaint alleged that respondent used the escrow funds from each of the three matters "mainly for himself," resulting in a (-\$13.46) balance on December 7, 2017. No funds were disbursed to Pereda, Barba, or Kirwan. A review of respondent's personal checking account statements shows cash withdrawals from ATM machines, charges for restaurants, jet travel to Utah, hotel stays, florists, city parking garages, and charges for personal bills.

The complaint also alleged that respondent failed to cooperate with the ethics investigation into these three grievances. In the Pereda matter, between November 2 and December 11, 2017, the OAE sent respondent three letters requesting attorney records and the client file in the matter. Although respondent initially cooperated, sending the client file on November 27, 2017, thereafter, he ceased communicating with the OAE and never furnished the records or a written explanation for his misuse of Pereda's funds.

Likewise, in the Barba matter, respondent failed to reply to the OAE's February 27, 2018 correspondence to him, requesting his written explanation for the use of Barba's funds, and for information about any steps he may have taken to replenish those funds.

Finally, in the Kirwan matter, the OAE sent respondent a letter requesting his reply to the grievance, which alleged misuse of Kirwan's funds. Respondent failed to reply. According to the complaint, respondent's last contact with ethics authorities in any of these three matters occurred on November 27, 2017.

Following a review of the record, we find that the facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer 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).

Respondent served as the escrow agent in three matters, one involving the sale of a business, and two involving the sale of real estate. Instead of depositing the escrow funds in an attorney trust account, as RPC 1.15(d) and R. 1:21-6(a) require, respondent deposited them in his own BOA personal checking account, a violation of the Rules. From there, he converted the funds to his own personal use, without consent.

Specifically, in the Pereda matter, respondent represented Pereda in the sale of Carcineria La Hacienda, to the Patels, for \$295,000. In May 2016, respondent received the Patels' \$30,500 deposit, which he improperly deposited in his personal checking account. The transaction did not close until

April 5, 2017, at which time the Patels gave respondent an additional cashier's check for \$20,000, to be held for taxes. Respondent deposited that check in his personal checking account as well.

When the Division informed the parties that taxes were 189.36, far less than the escrowed amount, respondent lied to Pereda that the tax burden was \$12,000. When Pereda asked respondent for proof, respondent was forced to disclose the true amount.

Thereafter, respondent never paid the minimal tax due to the Division, which Pereda was compelled to do on his own. In September 2017, the Division authorized the release of the escrow funds, which represented proceeds to Pereda. Respondent, however, never disbursed any of the total \$50,500 that he was to hold in trust for his client. Rather, by December 7, 2017, respondent had knowingly misappropriated all of those funds, leaving a (-\$13.46) balance in his personal checking account.

In the Barba matter, respondent represented the seller of a multi-unit dwelling in Union City. The buyers gave respondent their \$52,500 deposit, which respondent improperly deposited in his personal checking account. Because the Division required additional security for potential tax liabilities, Barba gave respondent \$23,606, bringing the total amount in respondent's care to \$76,106. Once again, respondent deposited the additional funds in his

personal checking account. The tax payment to the Division was determined to be \$17,757, and Barba directed respondent to make that disbursement. The remaining \$58,349 constituted seller's proceeds, which respondent was to hold pending the Division's authorization to release the balance to Barba.

Respondent failed to disburse any funds for taxes. At a time that respondent was supposed to be holding \$76,106 on account of the transaction, his account held just \$29,873.32. Respondent had used the escrowed funds for personal expenses and luxuries without the client's permission.

In the Kirwan matter, respondent served as escrow agent for the transaction, and in October 2016, received \$60,000 from Kirwan, to be held in escrow for potential oil tank remediation. Contrary to the escrow agreement, respondent deposited the funds in his personal checking account. In May 2017, the DEP issued a "no action" letter, which obligated respondent to release the entire escrow. He never disbursed any of those funds to the appropriate parties. At the time, respondent should have been holding \$186,606 on account of Kirwan (\$60,000), Pereda (\$50,500), and Barba (\$76,106). Yet, on April 9, 2018, BOA closed respondent's personal checking account with a (-\$2,028.71) balance. Respondent had depleted all of the \$186,606 in client and escrow funds.

The bank statements for respondent's personal checking account show that he was living on his clients' and others' funds. Charges appear for scores of ATM withdrawals, restaurants, jet travel, hotel stays, florists, and personal expenses.

Respondent spent trust funds with reckless abandon, as though they were his own. His use of \$186,606 of client and escrow funds for personal purposes, without the parties' knowledge or consent, constituted knowing misappropriation, a violation of RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451, and In re Hollendonner, 102 N.J. 21; a criminal act that reflected adversely on his honesty and trustworthiness – theft by misapplication of entrusted property, in violation of RPC 8.4(b) and N.J.S.A. 2C:21-15; and conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of RPC 8.4(c). He also violated RPC 1.15(d) and R. 1:21-6 by using his personal bank account in lieu of an attorney trust account.

Respondent also is guilty of failing to cooperate with the ethics investigations into these three matters. Although he furnished the client file in the Pereda matter, he refused to cooperate with the OAE after November 2017. On April 23, 2018, respondent was temporarily suspended for failing to


cooperate in these matters. Respondent's misconduct constituted violations of RPC 8.1(b).

For respondent's flagrant knowing misappropriation, under Wilson and Hollendonner, we recommend his disbarment.

Member Gallipoli and Member Joseph 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 Fernando J. Regojo
Docket No. DRB 18-407

Decided: July 23, 2019

Disposition: Disbar

<i>Members</i>	Disbar	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer	X		
Gallipoli			X
Hoberman	X		
Joseph			X
Rivera	X		
Singer	X		
Zmirich	X		
Total:	7	0	2


Ellen A. Brodsky
Chief Counsel