Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-328
District Docket No. XIV-2016-0111E

In the Matter of	:
William S. Winters	:
An Attorney at Law	:

Decision

Argued: January 17, 2019

Decided: August 6, 2019

Joseph A. Glyn appeared on behalf of the Office of Attorney Ethics.

John McGill, III appeared on behalf of respondent.

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

This matter was before us on a recommendation filed by a special master for an eight-month suspension, commencing August 30, 2018, for a total four-year suspension from the date of respondent's temporary suspension. The special master also recommended that respondent return $9,654.47 to a former client. 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 and failure to safeguard funds); RPC 8.4(b) (criminal conduct 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).

After the Office of Attorney Ethics (OAE) presented its case, respondent's counsel moved to dismiss the complaint based on its failure to set forth facts sufficient to constitute fair notice of the nature of the alleged unethical conduct. The special master denied the motion, which counsel renewed before us.

For the reasons expressed below, we determine to deny respondent's motion and to impose a prospective indeterminate suspension.

Respondent was admitted to the New Jersey bar in 1993, the New York bar in 1994, and the Pennsylvania bar in 1995.

On April 30, 2015, the Court temporarily suspended respondent, based on his "acknowledged refusal" to cooperate with the OAE. In re Winters, 221 N.J. 293 (2015). Also in 2015, the Court rejected respondent's consent to disbarment, ordered that the "disciplinary proceedings shall resume as if no consent had been submitted," and continued the temporary suspension previously imposed. In re Winters, 222 N.J. 86 (2015).

In 2017, respondent was censured, in a default, for his ongoing failure to cooperate with the OAE's investigation in this matter. In re Winters, 228 N.J. 464 (2017). The censure Order continued respondent's temporary suspension.

By way of background, respondent clerked for a New York judge and a New Jersey tax court judge, and worked at the law firms of Hoagland Longo, et al., and McCarter and English, where his practice focused on property tax appeals and general litigation matters. When respondent opened his own practice, he concentrated on real estate transactions and property tax appeals. He obtained clients by mailing solicitation letters.

According to respondent, he had an extensive real estate practice. He conducted "thousands of closings." Over the years, he transferred "tens of millions of dollars both into and out of [his] attorney trust account." He has had "thousands of real estate clients, and thousands of property tax appeal clients as well." Respondent explained that he recorded wire transfers for transactions by handwriting them on a legal pad. He kept a running log of the wires. He "never [maintained] a computerized form of keeping records."

In addition to his law practice, respondent purchased and managed both commercial and residential properties. He kept large amounts of personal funds in his trust account to avoid the necessity of obtaining certified checks in connection with those transactions. He would deposit more personal funds than

needed for a transaction, and leave extra funds in the account. At times, respondent had in excess of half a million dollars of personal funds in his trust account.

Since starting a private practice in 1996, respondent neither performed three-way reconciliations of his trust account, nor kept computerized trust account records. For real estate transactions and contingent fee matters, he recorded, on client ledger sheets, the amounts deposited and withdrawn for a particular transaction. Respondent recorded the checks when they were issued. His form of accounting, however, did not include recording the dates the checks cleared.

Both counts of the ethics complaint allege knowing misappropriation of client funds. The first count stemmed from an overdraft in respondent's Bank of America trust account, which occurred when he wire-transferred $160,000 from that account to his Scottrade brokerage account. The transfer invaded funds that respondent held on behalf of three clients, as well as funds belonging to clients for whom he filed property tax appeals. The second count involved respondent's filing of property tax appeals, on behalf of several clients, and keeping the full amount of the tax refund as his fee.

This case centers on solicitation letters that respondent sent to prospective clients, offering to appeal their real estate assessments. The

solicitation letters indicated that respondent's fee for filing the appeal would be contingent on the outcome. The clients who testified understood that respondent's letter offered a fee of one-third of their tax savings. Respondent contended, however, that he had sent multiple letters, some of which indicated that his fee would be 100% of the tax savings; the benefit to the client would be the prospective reduction in their taxes.

Respondent's refusal to cooperate made it difficult for the OAE to locate clients for whom respondent had filed tax appeals. Respondent's conduct came to light after the Bank of America notified the OAE of two overdrafts in respondent's trust account, on August 29 and September 4, 2014. According to OAE Disciplinary Auditor Jasmin Razanica, the New Jersey Division of Taxation (the Division) twice had attempted to negotiate respondent's trust account check for $25,934. Both times, the check was returned for insufficient funds. The check was one of nine submitted to the Division to satisfy a bulk sales tax liability due in connection with a June 9, 2014 sale of assets of a large estate for which respondent had served as the closing agent. The estate assets consisted of several commercial properties.

Although respondent had submitted the check in June 2014, the Division had not presented it for payment until August 27, 2014. The presentation of the

check for payment a second time, on September 2, 2014, caused an $8,204.29 overdraft in respondent's trust account.

Because the OAE deemed respondent's explanation for the overdraft incomplete, by letter dated December 18, 2014, the OAE requested that respondent produce, at a January 13, 2015 demand audit, three-way trust account reconciliations, receipts and disbursements journals, client ledger cards, and bank statements for his trust and business accounts for a three-month period.

Respondent appeared for the demand audit, but failed to produce all of the requested information. He presented only some client ledger cards. According to Razanica, respondent admitted that he did not maintain his trust account records in accordance with the recordkeeping rules; did not prepare three-way reconciliations; did not maintain trust account receipts or disbursements journals; and did not reconcile the trust account bank balances with outstanding checks and deposits in transit. Consequently, the OAE subpoenaed respondent's bank records and used Trust Analyzer, a software program, to assist in the analysis of checks, deposits, and bank statements. Without respondent's cooperation, Razanica was unable to reconstruct all of respondent's client ledgers and, therefore, could not account for all of the client funds in respondent's trust account.

During the OAE investigation, respondent informed Razanica that he relied on his bank statements to determine the amount of his fees. Apparently, respondent assumed that, after he made disbursements in client matters, the funds that remained in his trust account were his fees. He did not timely withdraw his fees, transferring them only when he had accumulated large amounts of funds that he considered to be his fees. Respondent commingled personal and trust funds, leaving personal funds in his trust account to avoid the necessity of obtaining official bank checks for his own real estate transactions, and deposited business account funds into his trust account to pay his own real estate taxes.

The OAE's review of respondent's records uncovered two wire transfers from his trust account to his Scottrade account: one on November 12, 2013, in the amount of $200,000, and the second, on August 19, 2014, for $160,000. Respondent failed to comply with the OAE's January 14, 2015 request for an explanation for the wire transfers, and, thereafter, refused to provide any further information to the OAE, which ultimately led to his April 30, 2015 temporary suspension.

Razanica used Trust Analyzer in an attempt to identify the owners of the funds transferred to the Scottrade account. His reconstruction of respondent's records established that the $160,000 wire transfer created the overdraft in

respondent's trust account. Respondent had insufficient funds in the account, on the date of the transfer, to cover the funds of three clients: Banas, Wong, and Lyden Properties, LLC. Respondent should have been safeguarding a total of $59,254.46 for these three clients. Following the $160,000 wire transfer, respondent had only $37,567.40 remaining in his trust account. Presumably, respondent had disbursed other monies from the trust account because, on September 2, 2014, when the Division presented respondent's $25,934 trust account check payment a second time, it caused the $8,204.29 overdraft in respondent's trust account.

According to Razanica, when he questioned respondent about the $160,000 wire-transfer, respondent "pled Fifth [sic] and he stopped communicating with [the OAE]" until after he retained counsel. Razanica asserted that, after the OAE filed the ethics complaint, respondent provided some documentation, but not the records that the OAE had requested. Without respondent's cooperation, Razanica was not able to determine the ownership of the $160,000 that respondent had wired.

At the DEC hearing, respondent explained that the overdraft related to a $10 million commercial real estate sale for his long-term client and friend, Wong. Based on the Division's letters, we presume that Wong was trading as Raritan Financial Group. The sale involved multiple parcels in different towns

and included strip malls, a shopping center, and small apartment buildings. The bulk sales tax, thus, was paid with nine checks to the Division. Respondent had escrowed funds from the sale until he received the Division's June 17, 2014 tax clearance letter.

According to respondent, once a tax clearance is received, no additional taxes are owed, and the escrow can be released. However, the Division had presented for payment only eight of the nine checks respondent had sent. The $25,934 check had not been presented for payment at the time the Division issued the tax clearance letter. As a result of respondent's nonexistent recordkeeping, he was not aware of the outstanding check when he wire transferred the $160,000 to his Scottrade account. He asserted that, prior to making the transfer, he had called Bank of America's automated system for his trust account balance and was satisfied that he had sufficient funds in his account to make the transfer. Respondent claimed that he also reviewed the checks he had issued within "the last couple of weeks," to determine whether any checks had yet to clear, and believed that there were no outstanding checks before he wired the funds. He, therefore, assumed that the funds left in his trust account were his fees.

Respondent added that, because he always left large sums of personal funds in the trust account, he believed that he was withdrawing his own funds

from the trust account when he made the $160,000 wire transfer. The June 11, 2014 check that respondent had written to the Division was not presented for payment until August 27, 2014. On September 3, 2014, about one week later, the bank informed respondent of an $8,000 shortage in his trust account. Respondent contended that he had not intentionally taken any client funds. When he learned of the trust account shortage, he immediately deposited $10,000 into his trust account. Although the bank had informed respondent about the overdraft, he asserted that it was not until November 2014 that the Division informed him that it had not received the $25,934 check. He immediately sent another check to the Division.

Respondent claimed that, in 2014, he had assets of about $915,000, "in cash," among other holdings, and, therefore, had no motive to take client funds. He denied having marital, financial, drug, or gambling problems. He pointed out that the amount of personal funds that he had wire transferred from his trust account was an arbitrary amount, and posited that, if he had taken only $150,000, he would not be facing these ethics charges. He conceded that his failure to maintain proper records, including failing to perform three-way reconciliations, led to his ethics problems.

During Razanica's examination of respondent's records in connection with the overdrafts, Razanica discovered other questionable transactions. He

found tax appeal refund deposits in respondent's trust account for client's Rafael Diaz, Dean Sottile, Joseph DeAngelis, Nat Enterprises ("Lollis"), and Selma Jahic. Razanica, however, could find no corresponding disbursements from respondent's trust account to these clients. Because respondent failed to submit records relating to individual clients, Razanica engaged in the arduous task of attempting to locate individuals or clients who might have been affected by respondent's practices. To identify these property owners, Razanica first contacted the various municipal officials who had sent checks to respondent for property tax refunds. Some of the checks comprised refunds to multiple property owners. Razanica then tried to determine on whose behalf the checks had been sent. His goal was to identify which clients had not received refunds, despite respondent's receipt of checks in connection with their tax appeals.

Respondent told Razanica that he charged the clients on a contingent fee basis, either one-third or 100% of the amount of the tax refunds. During the course of the OAE's investigation, respondent had not provided copies of his solicitation letters, which were purportedly retainer agreements, to support his contention.

Razanica interviewed several individuals, first by telephone, and then in person. He showed them copies of respondent's: (1) solicitation letter, which

claimed that respondent had come across their recent purchase of property, that their taxes may be too high, and that his "property tax group" handled tax appeals on a contingent basis; and (2) letter that he was "delighted to announce that we were able to negotiate a settlement of your tax appeal" (the "delighted settlement letter"), and that their tax saving would be "in the form of a refund check(s) from the tax collector to my office (my legal fee)." Respondent had not supplied these documents to the OAE during its initial investigation, but did so only after the ethics complaint had been filed.

Razanica learned that none of the clients personally had met respondent. They asserted that respondent had offered his services for a fee of one-third of any tax savings for the year under appeal. None of the individuals with whom Razanica had spoken had authorized respondent to take 100% of their tax refund.

Razanica noted that respondent deposited some of the tax refund checks into his trust account, and other funds directly into his business account. Razanica was unable to ascertain which clients had paid respondent in advance for their appeals and which clients had paid his fee from the tax refunds.

We now turn to the testimony of four of respondent's clients.

Selma Jahic, a vice president and bank branch manager, testified that she never met respondent or went to his office. She lived in North Arlington and

owned two properties. Jahic received a number of solicitations from different attorneys offering to appeal her property taxes and took the best offer she received, which was from respondent. She filled out a "property information sheet," which requested the address of the taxed property, her contact information, and her signature. Above her signature was the statement, "William S. Winters, Attorney at Law, is pursuing a property tax reduction for the property identified below pursuant to the terms of the attached letter." Jahic could not recall how the property information sheet had been transmitted to her, or whether it had been attached to a letter that set forth the terms of respondent's fee. Jahic believed that the offer she received from respondent was that he would retain one-third of the tax refund as his fee. She never authorized respondent to take 100% of her refund for 2009 and 2010.

After faxing a copy of her HUD-1 settlement statement to respondent's office on September 17, 2010, Jahic called respondent's office twice to follow up on the progress of her appeal. Respondent's employee told Jahic that respondent was working on her appeal, but was overwhelmed by his caseload, and that Jahic would be contacted when there was information "to share." Jahic testified "with a hundred percent of certainty" that afterwards, she had no communication with respondent's office. Hearing nothing further, Jahic believed that her tax appeal had been unsuccessful, and, thus, disposed of

respondent's letter/offer. During cross-examination, Jahic replied that she did not file a grievance against respondent because she was not aware that she had grounds to do so. She, thereafter, retained another attorney to pursue her property tax appeal.

When the OAE initially contacted Jahic, she mistakenly believed that the investigation involved the attorneys who later had succeeded in obtaining a property tax reduction on her behalf.

As to respondent's October 6, 2010 delighted settlement letter, Jahic was unequivocal that she never received it. That letter stated, in relevant part:

> I am delighted to announce that we were able to negotiate a settlement of your tax appeal reducing the 2009 and 2010 assessments from $220,000 to $180,000 . . . . This will eventually result in a tax savings of approximately $1,900 per year for two years (2009 and 2010). That tax savings for those years will be in the form of a refund check(s) from the tax collector to my office (my legal fee).

Likewise, Jahic never received copies of the signed stipulation of settlement with the Borough of North Arlington (the Borough); the tax court judgment, entered October 11, 2013; a check issued from the Borough, with respondent as the payee, in the amount of $13,981.43; the exhibit showing Jahic's portion of that check; or respondent's February 14, 2009 letter, titled "ADVERTISEMENT," stating that his fee was "the refund of any tax savings we are able to achieve (not to exceed three years)." Jahic denied having

received the solicitation letter from respondent. Although Jahic testified that respondent's initial communication to her was by way of postcard, for the one-third fee, respondent denied ever sending out postcards. According to Jahic, respondent never offered to negotiate a settlement on her behalf, and did not inform her that a complaint had been filed on her behalf, that he had settled her appeal, or that he had achieved a tax reduction on her behalf. She received no funds from respondent. Although she received an invoice for services from subsequent counsel, she never received anything similar from respondent's firm.

In turn, respondent maintained that he had sent Jahic a 100% fee letter on February 14, 2009. He pointed out that she had been confused during her initial interviews with the OAE, believing it was investigating subsequent counsel, and that she was unaware which tax appeal was being reviewed. He contended that she had never complained about the outcome of the appeal he had filed on her behalf and that he had achieved a "very good settlement" for her.

Respondent was confronted with his February 20, 2009 letter, offering a fee of one-third of any tax saving for the year under appeal. He explained that he had hired "what I call computer guys who would help me put together searches and spreadsheets. And they would send solicitation letters to their

mailing service," a warehouse with "huge printing abilities." He sent some letters directly from his office, but the overwhelming majority of the solicitation letters were sent through "my computer guys and the mailing service companies, with my permission and oversight." Respondent maintained that the mailing service used a bar code under the address of the recipient and that his signature was computer-generated. He authorized the mailing of the letters, however.

Joseph DeAngelis, a financial advisor, likewise, neither met respondent nor went to respondent's office. According to DeAngelis, he had received many solicitation letters, including respondent's advertisement, offering to file a tax appeal, for one-third of the annual tax reduction as respondent's fee. DeAngelis then called respondent, who confirmed the written offer, and verified that DeAngelis would not be responsible for out-of-pocket costs.

After faxing copies of the HUD-1 settlement statement and property information sheet to respondent, DeAngelis never heard from respondent again. DeAngelis did not recall receiving a copy of the tax appeal complaint; a stipulation of settlement; the delighted settlement letter; or a copy of the judgment. DeAngelis never authorized respondent to take 100% of the refund for 2009 and 2010, and he never received a copy of the check from Mahwah Township, payable to him "and/or" respondent. Likewise, DeAngelis never

received respondent's unsigned advertisement letter, which stated, "[o]ur fee is the refund of any tax savings we are able to achieve (not to exceed three years). . . . By signing the attached information sheet, you agree to the above terms and authorize this office to pursue a property tax appeal . . . endorse refund checks and disburse legal fees." DeAngelis did not recall signing "a contract" with respondent.

DeAngelis conceded that because, at some point, he and his wife had separated, there was a possibility that respondent had sent the correspondence, but DeAngelis had not received it. Nevertheless, he was not aware that respondent had received a tax refund in connection with his tax appeal and, thus, he never received any settlement funds. Razanica's investigation did not uncover any distribution to DeAngelis.

DeAngelis had received quite a few attorney advertisements for the filing of property tax appeals. After conferring with his attorney friends and his accountant, he understood that one-third of the tax refund was a customary fee. He had forgotten about the tax appeal until Razanica contacted him.

Despite the tens of thousands of solicitation letters that respondent claimed he sent per year, he maintained that he specifically recalled sending communications to DeAngelis, and that, in particular, he sent the February 14, 2009 letter, indicating that his fee was the refund of any tax savings, not to

exceed three years. According to respondent, he had included the property information sheet with the letter, but could provide no independent proof that he had done so. Respondent asserted that he had had numerous conversations with both DeAngelis and DeAngelis' wife; that he had mailed them the solicitation letter, property information sheet, and a self-addressed stamped envelope, as he did with each client; that he had received the fee he was owed; and that DeAngelis never called him or filed a complaint against him in any forum.

Another client, Rafael Diaz, a residential property appraiser, was not certain whether he met respondent. He was a reluctant witness, who had not wanted to appear for the hearing. Diaz recalled filling out the property information sheet and returning it to respondent. However, when questioned, he did not remember whether he had received any of the documentation relating to his appeal: the complaint; respondent's November 24, 2009 letter stating that he believed he could obtain a more favorable result than that offered by the tax assessor; respondent's March 15, 2011 delighted settlement letter; respondent's August 5, 2013 letter enclosing the stipulation of settlement; the unsigned 100% solicitation letter; or a $10,337.18 check from the City of Passaic. Respondent's letter to the City of Passaic tax collector, in

respect of the reduction in Diaz's tax assessment for tax years 2009 to 2011, stated, in relevant part:

> My client has authorized the issuance of a refund to this office as attorney for the petitioner. I will attend to the distribution of the appropriate refund to my client.
>
> Kindly issue a check payable to "William S. Winters, Esq." and forward same in the enclosed self-addressed stamped envelope.

Diaz denied that he would have authorized respondent to take 100% of the refund. He was adamant that he did not recall having received the delighted settlement letter, as he would have remembered respondent's receipt of a $10,000 fee. Diaz did not recall receiving any further communications from respondent, after sending the property information sheet to him. Diaz would not have known that respondent had filed the tax appeal, were it not for Razanica's contacting him. In fact, initially, he had no recollection of respondent at all.

Diaz admitted that he and his wife were separated, and he might not have been living at the property when respondent purportedly sent the documentation. Despite Diaz's adamant denials about respondent's fee, during cross-examination, he conceded that "as he sat there" that day, he did not recall the terms of their fee agreement or whether he had authorized respondent to take 100% of his refund.

Dean Sottile, a self-employed chiropractor, was shocked to learn from the OAE that respondent had settled his tax appeal and had obtained a tax refund. Sottile never met respondent, but received his February 20, 2009 solicitation letter for a property tax appeal, which stated that Sottile would incur no out-of-pocket expenses, and would pay a fee of one-third of the tax reduction. The letter to Sottile and his wife, Toniann Roses, did not indicate that it was an advertisement. The letter stated that Sottile and Roses might be paying more taxes than they should, based on the value of their property; that "[o]ur property tax group handles property tax appeals on a contingency basis, which means that you pay no legal or filing fee unless your taxes are reduced. Our fee is 1/3 of any tax savings for the year under appeal." After receiving the letter, Sottile called respondent's office to confirm the fee, and agreed to the arrangement. He was informed that it would be a very long process.

Thereafter, respondent's office faxed the property information sheet to Sottile. Sottile maintained that, although the document stated that respondent was pursuing a property tax reduction "pursuant to the attached letter," no letter was attached to the property information sheet.

Sottile's appeal was scheduled for a hearing on May 13, 2009, which he was unable to attend. Afterward, when Sottile called respondent's office, a staff member informed him that his appeal had been denied, but the office

would appeal the determination to the next level. Thereafter, respondent's office scheduled an inspection of Sottile's property.

Initially, Sottile called respondent's office every couple of months for a status update. However, the appeal was not high on his priorities, given the recent birth of his child and his work responsibilities. In addition, he expected it to be a long process.

Respondent introduced into evidence two different solicitation letters addressed to Sottile and Roses. In a February 14, 2009 letter, the recipients' names and address appear in uppercase letters; the word "advertisement" is displayed; the contingent fee is described as "the refund of any tax savings we are able to achieve (not to exceed three years);" no bar code proof of mailing is included; and the letter authorizes respondent's office "to pursue a property tax appeal, negotiate settlements, request and receive refunds from the municipality, endorse refund checks and disburse legal fees."

In a different letter, dated February 20, 2009, the recipients' information is not prepared in uppercase letters; the word "advertisement" is not displayed; the fee is described as "1/3 of any tax savings for the year under appeal;" no bar code proof of mailing is included, and no authorization paragraph is included. This letter states further, "We will keep you updated periodically as to our progress." The font on the two letters is different.

Sottile maintained that he received only the February 20, 2009 letter, saved it in a file, and faxed a copy to the OAE during its investigation. He never received the February 14, 2009, commenting, "it would be kind of weird to get two of these in one week." On cross-examination, however, Sottile testified that it was possible that he had received the February 14 letter, but if he had, he had disposed of it.

Respondent also produced a delighted settlement letter, dated October 5, 2010, addressed to Sottile only, in which respondent announced that he had negotiated a settlement of Sottile's tax appeal, resulting in a tax savings of approximately $4,800 per year for three years. According to the letter, the tax collector would send a refund check to respondent's office for the three years; respondent would retain those checks as his legal fee; and Sottile was not required to pay respondent filing fees or a legal fee.

Sottile denied that the October 5, 2016 letter accurately reflected his fee agreement with respondent. He explained that he never saw the letter and, had he seen it, he would have called respondent because he had never authorized respondent to keep 100% of the refund.

Sottile further denied having seen the tax refund check for $14,481.70, payable to him and respondent, until the OAE showed it to him, and he denied

having authorized respondent to endorse the check on his behalf or to keep the proceeds of the check.

At some point, Sottile received a postcard from the township, reflecting a reduction in the property taxes. Because he had not received any communications from respondent, he did not attribute the result to respondent, but to fluctuations in the market and a town-wide reassessment.

According to respondent, his office sent the February 14, 2009 advertisement-letter to Sottile and Roses, seeking the full tax refund as the fee, while the February 20, 2009 solicitation letter, seeking only one-third of the refund as the fee, was the letter that respondent's "office authorized the mailing service to send out." The letters sent by the mailing service were distinguishable by the bar code under the clients' address and respondent's computer-generated signature. The letters sent by his office did not contain any proof of mailing and his signature did not appear on the copies of the letters he provided to the OAE. He asserted that he did not make photocopies of the letters because so many left his office and, likewise, he had no proof that the letters were mailed. Respondent conceded that he did not provide the letters to the OAE until after the complaint was filed and the OAE requested discovery.

Respondent contended that, over the last twenty years, two "fee letters" were sent to the same individual only a handful of times and, typically, the

client would bring it to his attention. Yet, he also admitted that he had no controls in place to prevent the duplication and, therefore, did not know how many duplicate solicitation letters quoting different fees to the same recipient had been mailed. Because Sottile never brought the duplication to respondent's attention, he learned of it only through discovery. With the knowledge that Sottile had received two solicitation letters, respondent stated that he "would honor the lower fee," as he always had when he received a client complaint regarding the inconsistent fee. Respondent added that the blank property information sheet would have been included in both letters.

When the special master inquired whether respondent was testifying that he owed Sottile money, respondent admitted that he owed Sottile two-thirds of the tax savings.

Respondent claimed that there had been "extensive interaction between [his] office and Sottile" in the form of: a property inspection; Sottile sending the HUD-1 and an appraisal report; letters explaining the settlement, including a June 2012 letter about a property inspection; a July 20, 2010 inspection letter; and the above October 5, 2010 letter detailing the settlement and respondent's fee.

As to respondent's advertisement/solicitation letters, he could not explain why the provision, "By signing the attached information sheet, you

agree to the above terms and authorize this office to pursue a property tax appeal" was added to his letter, six days after he had sent a letter to Sottile without that statement. He maintained that he had various forms of solicitation letters "that went out in various tranches, some by my office, some . . . through the computer guys through the mailing service. They were . . . in different formats." Respondent claimed that he did not initially provide the various letters to the OAE because the OAE had not requested them.

Although respondent admitted that thousands of solicitation letters had been mailed, he could only speculate about whether DeAngelis, Diaz, and Jahic had also received the one-third fee letter, particularly since the clients were unable to produce the 2009 letters. Respondent testified that "there was very little overlap of these different tranches. They were extremely rare."

Respondent denied that he had knowingly misappropriated client funds; admitted that his recordkeeping was deficient; and conceded that, if he had performed three-way reconciliations, the overdrafts would not have occurred. Respondent maintained some client ledger cards, but not for the clients from whom he received a 100% contingent fee, because, in his opinion, the money was all his. It would have been duplicative to enter "this came in to me, this is going to me." In addition, he admitted that the client ledgers that he kept were not complete - they did not reflect running balances in the trust account.

In respect of the tax appeal matters, respondent claimed that the witnesses' recollection of what occurred was unreliable, with the exception of Sottile's. Respondent characterized the Sottile matter as a fee dispute and conceded that he owed Sottile money.

Respondent admitted that, after the ethics complaint was filed, he refused to participate in a second interview. He admitted further that he took the refund checks from the Jahic, Diaz, Sottile, and DeAngelis matters, deposited the checks in his trust account, and then used the funds as his own. He claimed he was entitled to the refunds based on his advertisement, the information sheet, and the letter describing the clients' tax benefit and his fee.

Respondent could not recall whether he had verbal communications with the above clients about his fee structure, because he had represented those clients in 2009, about eight years prior to the date of the ethics hearing. Moreover, he did not maintain any phone logs to verify any conversations with them.

As to the solicitation letters, respondent contended that, because he is not computer literate, he hired individuals to conduct searches and spreadsheets to locate potential clients. The vast majority of his letters were sent through his mailing service companies, with his permission and oversight. He also sent letters directly from his office. According to respondent, he sent

between 6,000 and 15,000 solicitation letters per year, mainly for sales that occurred within the last few years. His "computer guys" would download information into a database and compare it with the tax assessment. They would weed out undesirable properties, such as those involving foreclosures, bank sales, sheriff's deeds, sales pursuant to divorces, and distressed sales. Over the years, respondent has used different contingent fee structures: one-third, two-thirds, and 100% fees. The fee structures he offered were random. He would try to get as many "hits" as possible. Settlements were more difficult to achieve in certain municipalities. According to respondent, "the name of the game is -- try to settle . . . without too much pain and too much discovery."

In response to respondent's motion to dismiss the complaint, the OAE argued, in its letter-brief to the special master, that the complaint provided sufficient notice to respondent of the charges against him and, therefore, should not be dismissed.

The OAE asserted that respondent was unable to provide proof that his fee was 100% of his clients' tax refunds. According to the OAE, the letters that respondent proffered contained no client signature acknowledging "the so called 'retainer agreement'" and included the term "advertisement" at the top of the documents. Moreover, the letters did not convey that they were a fee agreement.

The OAE argued that respondent had manufactured the letters after the complaint was filed; and that, nevertheless, even if respondent's contentions were true, the documents did not shield him from a finding of knowing misappropriation. If respondent "deluded himself" into believing that he had the authority to take the refunds, based on his system of sending different retainers to the same client and "acting in congruence with the one that benefitted him the most, he was at least, willfully blind to his knowing misappropriation of client funds." Under either scenario, the OAE argued, respondent committed a Wilson violation and must be disbarred.

In respect of respondent's defense, the OAE argued that respondent lacked credibility. "He made things up as he testified," mischaracterized the testimony of the witnesses, attacked their credibility without basis, and "mixed the witnesses up," ascribing facts or circumstances to the wrong witnesses.

The OAE pointed out that the testimony of each witness corroborated the other's testimony. Each witness described a "disturbing pattern of conduct:" first, respondent engaged in some communication with the property owners; then he failed to communicate with them; over a period of time, the clients' interest in their tax appeals gradually faded until each believed nothing would or had occurred; and after each of the clients lost interest, respondent collected and retained 100% of their refunds.

As to respondent's motive, the OAE argued that he took his clients' money to speculate on stock. Because respondent refused to provide documentation or an explanation for the transfer of the $160,000 to his Scottrade account, the OAE was relegated to reconstructing respondent's records. According to the OAE, respondent's motive for not providing complete information was to limit the information the OAE could analyze because "the least information the OAE had regarding the universe of clients, the better his ability to defend the allegations against him."

The OAE pointed out that, although respondent claimed that he had significant funds at his disposal, which showed a "lack of motive to steal," the special master barred evidence of respondent's bank records, because they had not been exchanged in discovery. The OAE argued that, because of the scant, incomplete, and tardy records that respondent supplied, the OAE lacked the opportunity to investigate and/or determine what funds he had at his disposal.

The OAE underscored the language in respondent's letters, captioned "**ADVERTISEMENT.**" The language therein authorized respondent to pursue the property tax appeal and "negotiate settlements, request and receive funds from the municipality, endorse checks and disburse legal fees." The OAE contended that respondent was not entitled to perform these acts and that "it [was] not reasonable or believable" that, out of the tens of thousands of

solicitation letters he sent, he could produce only the letters relating to the clients named in the complaint. Respondent blamed the OAE for not requesting the documentation. The OAE, however, maintained that, "from the inception of this investigation, it sought this information," but respondent chose not to submit it.

Finally, the OAE pointed out that, even if we accepted respondent's claim that the 100% fee letters were actually sent, respondent failed to ensure that he did not disseminate duplicate mailings to the same individual. Further, the contact information sheet that purportedly authorized respondent to pursue the appeal failed to delineate the amount of the fee to which the potential client had agreed. Respondent's scenario permitted him to proceed under the agreement most beneficial to him, taking 100% of the refund, rather than the one-third fee, to which the clients believed they had agreed.

The OAE characterized respondent's conduct as unreasonable, and fraught with misrepresentations and deceptions, and argued that respondent should be disbarred.

Respondent's post-hearing submission to the special master argued that (1) the complaint should be dismissed because it failed to provide sufficient notice of the unethical conduct respondent allegedly committed; and (2) the OAE failed to meet its burden of proof. Respondent accused the OAE of

incorrectly assuming that he charged all tax appeal clients a one-third contingent fee and argued that the OAE misrepresented to the witnesses that his fee should have been one-third, even though they did not recall the terms of their agreement. Moreover, respondent accused the OAE of using this assumption to calculate the "alleged trust account shortages" in count one of the complaint. Respondent argued that the OAE failed to produce clear and convincing evidence that the overdraft in respondent's trust account was caused by his knowing and unauthorized taking of client funds. As to the tax appeals, respondent alleged that his conduct amounted to fee disputes, not knowing misappropriation of client funds.

Respondent pointed out that, although a portion of the complaint related to the property tax appeal of Keith Lollis and Nath Enterprises, LLC, Lollis did not testify at the DEC hearing. Therefore, no competent evidence supported the charge that respondent took Lollis' fee without authorization. Respondent also argued that the testimony of witnesses Jahic and Diaz was unreliable because of their confused, inconsistent, and faded recollections of events that occurred in 2009. In sum, respondent argued that he had no motive or need to invade client funds and, thus, the entire complaint against him should be dismissed.

The special master denied respondent's motion to dismiss the complaint, finding that the allegations were legally sufficient, that respondent had adequate notice of the charges against him, and that he was able to defend against the charges.

The special master determined that respondent's mismanagement of his trust account and commingling of significant amounts of personal funds in that account prevented him from being able to distinguish his funds from client funds or to determine when trust account checks cleared the account. The special master, therefore, found that, when respondent transferred $160,000 from this trust account to his Scottrade account, he had not knowingly invaded funds belonging to clients Banas, Wong, and Lyden Properties, LLC. The special master did not find that respondent's use of the funds was unauthorized, given his testimony that the owners were either long-time clients or friends.

The special master found that respondent testified credibly that he had not anticipated the shortfall in his trust account, as he thought he had left sufficient balances in that account. Respondent, however, grossly neglected his trust account responsibilities. He admittedly failed to keep accurate records, and willfully commingled significant amounts of personal funds in his trust account. His recordkeeping practices made it difficult for the OAE to determine the source or allocation of funds that he withdrew or left behind.

As to the tax appeals, the special master found that respondent's credibility regarding fee agreements was "significantly complicated" by uncontrolled mass mailings, and contradictory fee offerings.

The special master found that DeAngelis' testimony was based on his subjective experience and hearsay and, therefore, was unreliable. He found further that DeAngelis was confused and unreliable with regard to his relationship with respondent and the tax appeal. He, therefore, concluded that the OAE did not establish by clear and convincing evidence that respondent took money held in trust from DeAngelis on August 19, 2014.

With regard to Diaz, the special master pointed out that the February 27, 2009 fax that Diaz returned to respondent did not definitively resolve the question of whether Diaz had replied to the one-third or 100% fee offer. The special master noted that respondent's sloppy practices generated the conflicting evidence. Here, too, the special master found no clear and convincing evidence that respondent took client funds from Diaz.

The special master concluded that Sottile testified convincingly that he retained respondent based on the one-third fee "retainer" letter. However, he determined that, because respondent maintained that he also sent Sottile a 100% "fee letter," it was illustrative of the problem with respondent's "lack of control over these solicitations."

The special master found clear and convincing evidence that respondent negligently misappropriated some portion of the funds held in trust for Sottile on August 19, 2014, but the exact amount could not be calculated. He concluded that "respondent cannot be shielded from liability due to his mismanagement of tax appeal solicitations and [his trust account]." Although the special master found respondent's mismanagement egregious, he did not find that it established the intent required under Wilson.

According to the special master, Jahic's testimony was confused. All he could deduce from it was that she retained respondent, and he negotiated a tax appeal settlement on her behalf, but she was uncertain as to any particular fee arrangement with respondent. He found no clear and convincing evidence that respondent took money he held in trust from Jahic.

The special master did not find clear and convincing evidence that respondent violated RPC 8.4(b) or (c). He determined that respondent's mismanagement of his solicitations and his trust account prevented him from forming the intent to knowingly misappropriate client trust funds. In addition, respondent credibly testified that he was not aware that he was creating a deficiency when he withdrew the $160,000. The withdrawal was not made for any particular need. Nevertheless, the special master found that respondent's

"gross incompetence" with regard to his trust account did not shield him from his responsibility to safeguard client funds.

The special master declined to find, under the willful blindness theory, that respondent's accounting practices were designed to prevent him from knowing whether he had used client funds. Instead, the special master found that respondent's goal was simply to leave a sufficient balance in the trust account to cover what he estimated were his outstanding checks. The special master concluded that respondent negligently, rather than knowingly, misappropriated Sottile's funds.

The special master pointed out that he was not overlooking or excusing respondent's "troubling conduct." The record established that respondent was

> acting as a businessman exploiting inefficiencies in the New Jersey real estate tax appeal system for personal gain, as opposed to acting as a lawyer. In this context, the clients serve as vehicles enabling attorneys [to] secure profits from what are inevitably public funds. The fact that [respondent] is not alone in this regard, but competes with others holding licenses to practice law, indicates a systemic problem in need of correction. The clients are in the dark, and couldn't care less for the most part. [Respondent] took advantage of this situation.
>
> [SMR18.] [1]

[1] SMR refers to the September 10, 2018 special master's report.

In sum, the special master found that respondent's egregious failure to properly manage his trust account resulted in the negligent misappropriation of Sottile's trust funds. In assessing the appropriate sanction for respondent's conduct, the special master determined that respondent's poor practices could not serve to exculpate him for his misconduct. The special master considered, in mitigation, the unlikelihood that respondent will not comply with recordkeeping requirements if he resumes the practice of law, and the following aggravating factors: respondent's cavalier attitude toward his recordkeeping responsibilities; his sending mass solicitation letters with conflicting retainer offers, which resulted in his and his clients' confusion; and his ethics history. The special master determined that, for respondent's violation of RPC 1.15(a), he should receive an eight-month suspension, retroactive to August 30, 2018, and that he pay restitution to Sottile in the amount of $9,654.47.

In the OAE's letter-brief to us, it urged that we reject the special master's findings of fact as not supported by the substantial credible evidence in the record and that we find that respondent knowingly misappropriated client trust funds.

In addition to reiterating the argument to the special master that the four witnesses corroborated each other's testimony, the OAE pointed out that the

delighted settlement letters were "purportedly" sent two-to-three years before the matters actually were settled: (1) the letter to Sottile was sent on October 5, 2010, even though the stipulation of settlement was not signed until January 22, 2013; (2) the letter to Jahic was sent on October 6, 2010, but the stipulation of settlement was not signed until September 9, 2013; (3) the letter to DeAngelis was sent on May 3, 2010, although the stipulation of settlement was signed on September 19, 2013; and (4) the letter to Diaz was sent on March 15, 2011, but the stipulation of settlement was signed in August 2013. According to the OAE, respondent's actions established an intent to deceive the finder of fact.

The OAE argued that respondent knowingly misappropriated trust funds, on August 19, 2014, when he transferred the funds to his Scottrade account, and, therefore, he should be disbarred. However, the OAE proposed that, if we were to agree with the special master that the proofs fell short of knowing misappropriation, respondent should be suspended for four years, prospectively, so that he is not rewarded for failing to cooperate with the OAE. Indeed, the OAE suggested that the suspension should take effect only after respondent cooperates with the OAE.

In respondent's letter-brief to us, he renewed his argument that his motion to dismiss should have been granted. Further, respondent maintained

that the OAE failed to introduce "facts or allegations" (1) that he was aware of the condition of his trust account when he transferred the trust account funds to his Scottrade account; (2) that he "possessed guilty knowledge at any relevant time;" (3) that he knew he was invading client funds when he made the transfer; or (4) that he committed knowing, rather than negligent, conduct.

Respondent contended that it is "inconceivable" that he issued a check to the Division on June 11, 2014, knowing that it would be dishonored eighty days later, when the Division belatedly presented it for payment or that he would wire transfer funds on August 19, 2014, knowing that the check to the Division would be dishonored. Moreover, respondent claims, at the time of the transfer, he had large amounts of liquid funds, more than enough to offset an $8,000 shortage. Thus, he argued that he had no intent to misappropriate funds and the OAE failed to introduce clear and convincing evidence of knowing misappropriation, theft, dishonesty, fraud, deceit, or misrepresentation.

Respondent contended that, at best, the evidence supported only a finding that his failure to maintain proper records resulted in his negligent misappropriation of client funds.

For the above-stated reasons, respondent contended that the complaint should have been dismissed. In the alternative, he argued that any suspension based on his negligent misappropriation in the Sottile matter should be

retroactive to the date of his temporary suspension, not to exceed "time served."

Following a de novo review of the record, we agree with the special master's finding that the record contains clear and convincing evidence of respondent's violation of RPC 1.15(a). Unlike the special master, however, we find a violation of RPC 8.4(c).

We agree with the special master's view that respondent's conduct was a scheme to exploit unknowing clients. For the most part, the clients testified consistently: (1) three clients testified that they had neither met respondent nor visited his office; (2) each client received a number of solicitation letters from different attorneys, but selected respondent to file their tax appeals because he offered the best rate; (3) none of them recalled authorizing respondent to take 100% of their tax refunds as their fee; (4) after receiving no further information from respondent, all of them believed that their appeals had been unsuccessful; (5) all of the clients were surprised to learn from the OAE that respondent had succeeded in obtaining a tax refund on their behalf and that he had retained the refund; (6) all of them denied receiving a letter that he had settled their tax appeals and was keeping the funds as his fee; and (7) all of the letters which purported to inform the clients of the settlement of their tax appeals pre-dated the settlement by two-to-three years.

In his argument, respondent focused on the cross-examination of some of the witnesses who wavered on portions of their recollections. Nevertheless, some facts are not in dispute. Specifically, respondent did not provide the witnesses with "traditional" written retainer agreements; rather, the documents that the witnesses signed were not attached to any agreement authorizing any specific percentage of the refund as a fee. He created a system whereby clients received multiple offer letters with differing fee structures. The issue of whether a client would agree to a one-third fee or a 100% fee is not a matter of credibility, it belies logic that a client would opt for a fee of 100% of the tax savings instead of one-third. Further, respondent, without question, refused to cooperate with the OAE. His admitted carelessness and outright refusal to add clarity to the client's confusion cannot inure to his benefit.

Moreover, the evidence supports a finding that respondent did not provide the witnesses with settlement distribution sheets. None of the witnesses recalled receiving even a notice of settlement. Indeed, respondent's communications with the witnesses ceased, such that they had forgotten that respondent was filing appeals on their behalf and, when the OAE contacted them, they were surprised to discover that respondent had obtained tax refunds in their names. It was not until after the complaint was filed that respondent provided evidence of settlements, which reflected the 100% fee. We are

inclined to accept the OAE's argument that certain documents were fabricated given that they predated the actual settlements. There can be no other explanation.

In addition, respondent admitted that he was required to return a portion of his fee in the Sottile matter, given that the evidence supported a finding that he agreed to represent the client in the tax appeal for a one-third fee. Thus, we reject respondent's position that all the charges should be dismissed and find that he negligently misappropriated client funds in violation of RPC 1.15(a) .

Moreover, we find a violation of RPC 8.4(c), based on respondent's purported practice of sending out conflicting solicitation letters to the same client, in short succession; failure to obtain his client's consent to settle the appeals; failure to provide the clients with settlement statements; and failure to obtain fully executed written agreements that clearly establish the basis or rate of the fee charged.

In respect of the knowing misappropriation charge based on respondent's $160,000 transfer, we accept his explanation. Respondent's non-existent recordkeeping left the record short of evidence that he clearly and convincingly misappropriated the funds he should have been holding for Banas, Wong, and Lyden Properties, LLC.

Respondent readily admitted that his non-compliance with the recordkeeping rules prevented him from ascertaining that the Division had not cashed one of the bulk sales tax checks. The Division's issuance of a tax clearance letter, indicating that all of the taxes due from the seller had been paid and that no further amounts needed to be withheld from the sale, further bolstered his position that he believed that the check had cleared and he could make the $160,000 transfer after verifying through the bank's automated system that he had sufficient funds in his trust account to cover the transfer. Based on the state of his records, he was unaware of the outstanding check. Thus, when the Division presented respondent's $25,934 trust account check, it caused a $6,640.29 overdraft in his account. Respondent attributed the overdraft to his shoddy recordkeeping. When he learned of the overdraft, he promptly replenished the funds.

Finally, we note that, although not charged, the record supports findings that respondent also violated RPC 1.5(c) because the solicitation/advertisement letters that he claimed were fee agreements failed to provide details with regard to how the fee was to be calculated or a record of settlement; RPC 7.3(b)(5)(i) in his dissemination of letters to prospective clients because his letter failed to prominently display the word "'ADVERTISEMENT' at the top of the first page of text and on the outside envelope"; and RPC 7.2(b) because

he failed to maintain written communications for three years after the dissemination of solicitation letters. Although we cannot impose discipline for these violations, respondent is on notice that, if he were to return to the practice of law, his methods of marketing and soliciting clients is contrary to the RPCs.

The issue of the quantum of discipline for respondent's negligent misappropriation and his gross violation of RPC 8.4(c) is a difficult one. We recognize that, generally, a reprimand is imposed for recordkeeping deficiencies that result in the negligent misappropriation of client funds. See, e.g., In re Cameron, 221 N.J. 238 (2015) (after the attorney had deposited $8,000 into his trust account for the payoff of a second mortgage on a property that his two clients intended to purchase, he disbursed $3,500, representing legal fees that the clients owed to him for prior matters, leaving in his trust account $4,500 for the clients, in addition to $4,406.77 belonging to other clients; when the deal fell through, the attorney, who had forgotten about the $3,500 disbursement, issued an $8,000 refund to one of the clients, thereby invading other clients' funds; a violation of RPC 1.15(a); upon learning of the overpayment, the attorney collected $3,500 from one of the clients and replenished his trust account; a demand audit of the attorney's books and records uncovered "various recordkeeping deficiencies," a violation of RPC

1.15(d)); In re Wecht, 217 N.J. 619 (2014) (attorney's inadequate records caused him to negligently misappropriate trust funds, violations of RPC 1.15(a) and RPC 1.15(d)); and In re Gleason, 206 N.J. 139 (2011) (attorney negligently misappropriated clients' funds by disbursing more than he had collected in five real estate transactions in which he represented a client; the excess disbursements, which were the result of the attorney's poor recordkeeping practices, were solely for the benefit of the client; the attorney also failed to memorialize the basis or rate of his fee).

The sanction imposed on attorneys who have lied to clients and/or third parties has ranged from a reprimand to a suspension, depending on the facts of each case, including the extent or prolonged nature of the wrongdoing, the harm to the clients or others, and the presence of mitigating or aggravating circumstances. See, e.g., In re Walcott, 217 N.J. 367 (2014) (reprimand for attorney who misrepresented to a third party, in writing, that he was holding $2,000 in escrow from his client as collateral for a settlement agreement); In re Homan, 195 N.J. 185 (2008) (censure for attorney who fabricated a promissory note reflecting a loan to him from a client, forged the signature of the client's attorney-in-fact, and gave the note to the OAE during the investigation of a grievance against him; the attorney told the OAE that the note was genuine and that it had been executed contemporaneously with its creation; ultimately, the

attorney admitted his impropriety to the OAE; extremely compelling mitigating factors considered, including the attorney's impeccable forty-year professional record, the legitimacy of the loan transaction listed on the note, and the fact that the attorney's fabrication of the note was prompted by his panic at being contacted by the OAE and his embarrassment over his failure to prepare the note contemporaneously with the loan); and In re Brollesy, 217 N.J. 307 (2014) (three-month suspension in a consent to discipline matter for an attorney who misled his client, a Swedish pharmaceutical company, that he had obtained visa approval for one of the company's top-level executives to begin working in the United States; although the attorney had filed an initial application of the visa, he took no further action thereafter and failed to keep the client informed about the status of the case; in order to conceal his inaction, the attorney lied to the client, fabricated a letter purportedly from the United States Embassy, and forged the signature of a fictitious United States Consul to it; mitigation included the attorney's twenty years at the bar without prior discipline and his ready admission of wrongdoing by entering into a disciplinary stipulation.

Here, however, respondent's misconduct stretches far beyond the realm of inadvertent misappropriation and simple misrepresentations. We are convinced that he engaged in a scheme to lure clients to agree to representation

for a one-third fee, then delayed the matter and ceased communication so the client lost interest, and, finally, retained the full tax refunds without the clients' awareness that refunds had been issued. Further, because respondent recognized that such misconduct could rise to the level of knowing misappropriation and lead to his disbarment, he admittedly refused to provide the OAE with documents that would reveal his deception.

In our view, respondent should not benefit from employing such tactics. Not only would a reprimand or short suspension fail to protect the public, it would encourage other members of the bar to adopt the strategy of refusing to cooperate with disciplinary authorities when facing a knowing misappropriation charge so as to avoid more severe discipline. Although respondent's failure to cooperate with the OAE resulted in a lack of clear and convincing evidence of knowing misappropriation, substantial discipline is warranted to protect the public. Therefore, we impose an indeterminate suspension on respondent and reiterate that, before he may be restored to the practice of law, he must cooperate with the OAE's investigation.

Members Gallipoli and Zmirich voted to recommend respondent's disbarment, finding clear and convincing evidence that he knowingly misappropriated client funds.

Members Singer and Rivera 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 William S. Winters
Docket No. DRB 18-328

Argued: January 17, 2019

Decided: August 6, 2019

Disposition: Indeterminate Suspension

Members	Indeterminate Suspension	Disbar	Recused	Did Not Participate
Frost	X			
Clark	X			
Boyer	X			
Gallipoli		X		
Hoberman	X			
Joseph	X			
Rivera				X
Singer				X
Zmirich		X		
Total:	5	2	0	2

Ellen A. Brodsky
Chief Counsel