

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-394
District Docket No. XIV-2016-0657E

In the Matter of
Aiman Ibrahim
An Attorney at Law

Decision

Decided: August 7, 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 of client and escrow funds); RPC 8.1(a) (false statement of fact in connection with a disciplinary matter); RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority); RPC

8.4(b) (criminal conduct) (violations of N.J.S.A. 2C:20-9, N.J.S.A. 2C:21-5, and N.J.S.A. 2C:21-15); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

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

Respondent was admitted to the New Jersey bar in 2008 and the New York bar in 2009. He has no disciplinary history in New Jersey.

Service of process was proper in this matter. On October 11, 2018, in accordance with R. 1:20-7(h), the OAE sent a copy of the complaint, by regular and certified mail, return receipt requested, to respondent's office in Totowa, New Jersey, and the home address listed in the records of the New Jersey Lawyers' Fund for Client Protection (the Fund). On October 15, 2018, the certified mail sent to respondent's home address was delivered. Although the signature of the recipient's first name is illegible, the last name appears to be Ibrahim. The regular mail was not returned. The record does not disclose the disposition of the mail sent to respondent's office.

On November 7, 2018, the OAE sent a letter to respondent in accordance with R. 1:20-4(e) to his home address, by regular and certified mail, return receipt requested, warning respondent that, if he failed to file a verified answer to the complaint within five days of the date of the letter, the allegations of the

complaint would be deemed admitted, the entire record would be certified directly to us for the imposition of discipline, and the complaint would be deemed amended to include a violation of RPC 8.1(b). The certified mail was delivered on November 13, 2018. Again, the first name of the recipient's signature is illegible, but the last name appears to be Ibrahim. The regular mail was not returned.

As of November 20, 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.

On October 6, 2016, the OAE received notice from PNC Bank of an overdraft in respondent's attorney trust account (ATA). This notice prompted the OAE to undertake an investigation, which revealed the following.

In 2014, Whole Foods, Inc. (Whole Foods) attempted to purchase a liquor license for its future location in Jersey City, New Jersey. Respondent represented the seller of the license, Landico Realty. On May 21, 2014, the parties signed a contract for the sale. On June 11, 2014, Whole Foods sent respondent a check for \$16,500, representing the deposit he was required to hold in escrow. Respondent deposited the funds into his trust account.

The contract provided a 120-day period for Whole Foods to obtain approval from the Alcohol and Beverage Control Commission of Jersey City (Jersey City ABC) for the purchase of the liquor license. Due to Landico's tax problems, Jersey City ABC did not approve the sale of the liquor license. Thus, on April 27, 2016, respondent sent an e-mail to Richard Nasca, counsel for Whole Foods, explaining that the Internal Revenue Service was unwilling to settle Landico's tax matters and that his client was pursuing a Chapter 13 reorganization to prioritize debt, remove any prohibition on the sale of assets, and move the sale of the liquor license into a priority position. On May 6, 2016, Nasca informed respondent, via e-mail, that Whole Foods was terminating the contract. On June 1, 2016, at respondent's request, Nasca sent formal notice of the cancellation of the contract. In that letter, he requested the return of the \$16,500 Whole Foods deposit.

Nasca made several subsequent requests for the return of the deposit. On June 15, 2016, respondent replied that he was waiting to meet with his client to tell him in person that the contract was terminated. Respondent assured Nasca that the deposit money would be returned immediately thereafter. In a follow-up e-mail on July 5, 2016, respondent informed Nasca that his client was not responding to him, and that he had directed his accountant to close the trust

subaccount and to immediately issue a refund check to Whole Foods. Respondent failed to return the \$16,500 Whole Foods deposit.

Respondent could not return the deposit to Whole Foods because he had not maintained the escrow funds intact. On October 31, 2014, four months after respondent had deposited the Whole Foods check, the ending balance in his ATA was \$12,200, or \$4,300 less than the amount he was required to safeguard on behalf of Whole Foods. By the end of November 2014, the balance in respondent's trust account had decreased to only \$100. Almost two years later, in July 2016, the balance in respondent's trust account was \$5. Two months later, on September 13, 2016, respondent issued a check for \$16,500 from his ATA to Whole Foods. On September 23, 2016, that check was returned for insufficient funds, triggering the notice to the OAE.

The complaint alleged that respondent knowingly misappropriated escrow funds in connection with the sale of a liquor license from Landico to Whole Foods. Except for a short period in April and May 2015, the balance in respondent's trust account was less than \$16,500, and as low as \$5.

In a statement to the OAE during its investigation, respondent falsely stated that he had used the Whole Foods deposit as his own because Landico had informed him that the period for Whole Foods to obtain the liquor license had lapsed, and that Landico was entitled to the deposit as liquidated damages

for Whole Foods' violation of the contract. Thus, respondent claimed, Landico authorized him to borrow the funds. However, according to the complaint, no such provision existed in the contract. Further, respondent was aware that the period for obtaining the liquor license had not lapsed, as established by e-mails he had sent to Landico, consenting to extensions of that time. Respondent did not claim to have Whole Foods' consent to use the escrow funds.

Additionally, respondent failed to cooperate with the OAE during its investigation. After receiving notice from the bank of the overdraft in respondent's trust account, the OAE sent a letter to respondent requesting an explanation, by October 25, 2016. On October 28, 2016, the OAE received respondent's request for additional time to reply.

On December 8, 2016, the OAE directed respondent to appear at its office on January 5, 2017 for a demand audit of his books and records. On January 3, 2017, the OAE left a voicemail message for respondent confirming the January 5, 2017 demand audit. Respondent neither returned the phone call nor appeared for the January 5, 2017 demand audit.

On January 9, 2017, the demand audit was rescheduled for January 23, 2017. In anticipation of the audit, the OAE directed respondent to submit reconciliations and account journals by January 13, 2017. Because respondent

failed to submit these documents, the OAE left a voicemail message for him on January 17, 2017.

On January 22, 2017, respondent informed the OAE, via fax, that he could not attend the demand audit. On January 23, 24, and 25, 2017, respectively, the OAE left voicemail messages for respondent directing him to call the OAE. Respondent did not contact the OAE. As a result, on January 31, 2017, the OAE filed a motion with the Court for respondent's temporary suspension, based on his failure to cooperate. On March 7, 2017, the Court ordered respondent to comply with all outstanding requests from the OAE for documents and information within thirty days.

On March 13, 2017, the OAE again directed respondent to appear at its office, on April 13, 2017, for a demand audit of his books and records. Respondent appeared for the demand audit and was given until May 3, 2017 to submit certain records, which he failed to do.

On June 28, 2017, the OAE directed respondent to submit certain records by July 7, 2017. Respondent failed to comply. In a July 13, 2017 telephone conversation, the OAE directed respondent to appear for another demand audit on July 31, 2017. Also on July 13, 2017, via letter, the OAE directed respondent to provide certain documents by July 24, 2017, and confirmed the date of the demand audit. On July 31, 2017, respondent faxed a letter to the OAE, stating

that he would not be attending the demand audit. Respondent had not provided the OAE with the requested documents by the July 24, 2017 deadline.

Respondent failed to produce records or otherwise comply with the Court's March 7, 2017 Order. The Court's unpublished Order provided that, upon respondent's failure to comply with the Order, "on submission of a detailed certification from the Office of Attorney Ethics, respondent shall be temporarily suspended from the practice of law without further notice, pending his compliance, and until the further Order of the Court." The record does not provide additional information in respect of respondent's failure to cooperate; however, he was not temporarily suspended.

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 a transaction between his client, Landico, and Whole Foods. He was required to safeguard the \$16,500 Whole Foods deposit. Respondent invaded those funds when he issued \$30,000 in checks to himself. By the end of October 2014, respondent's ATA balance was \$12,200, or \$4,300 less than the amount he was required to safeguard on behalf

of Whole Foods. By the end of the following month, his balance had decreased to \$100.

In 2016, respondent admitted to the OAE that he had used the Whole Foods deposit for his own purposes, claiming that he was entitled to the money as liquidated damages. The record and admissions in the complaint do not support his position. Respondent offered no evidence or explanation that would have entitled him, rather than his client, to retain the deposit as liquidated damages. Moreover, he had dissipated the funds before Whole Foods could have been deemed to have defaulted on the contract. Furthermore, because the deposit represented escrow funds, respondent needed the permission of both parties to the escrow agreement – his client's and Whole Foods'. See In re Gifis, 156 N.J. 323, 354 (1998). However, he did not have Whole Foods' permission to use the escrow funds. Based on the facts of the complaint, we find that respondent knowingly misappropriated Whole Foods' deposit that he was required to safeguard. His use of those funds, without Whole Foods' permission, violated RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 and In re Hollendonner, 102 N.J. 21.

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

Unless the context indicates otherwise, "misappropriation" as used in this opinion means any unauthorized use by the lawyer of clients' funds entrusted to him, including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom.

[In re Wilson, 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.

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 addition to knowingly misappropriating client funds, respondent failed to cooperate with the OAE in the investigation of this matter by failing to provide requested documents or appear for demand audits, in violation of RPC 8.1(b). In so doing, he also disobeyed a Court Order, in violation of RPC 8.4(d).

Additionally, and contrary to his explanation of his entitlement to the money, on September 13, 2016, respondent issued a check to Whole Foods for the full amount of its deposit. If he believed he was entitled to the funds, he would not have executed and delivered a check to Whole Foods. Respondent issued the check with the knowledge that he did not have sufficient funds in his ATA to cover that check. Moreover, on September 21, 2016, he issued a check to himself for \$11,200, from his business account, knowing that the account had been closed one year earlier. By issuing each of these checks, as well as by using

the Whole Foods deposit for his own purposes, respondent engaged in criminal conduct, in violation of N.J.S.A. 2C:20-9, N.J.S.A. 2C:21-5, N.J.S.A. 2C:21-15, and RPC 8.4(b).

Finally, respondent misrepresented to counsel for Whole Foods that he still had the funds in his account, well after he had used the funds, and promised to issue a refund promptly, only to then issue a check to Whole Foods, knowing that his account balance was insufficient, a violation of RPC 8.4(c). Respondent made additional misrepresentations to the OAE when he claimed that he was entitled to the funds because Whole Foods' time to obtain the liquor license had lapsed, that it was in breach of the contract, and that the client told respondent that he was entitled to the deposit as liquidated damages. Respondent's misconduct in this regard violated RPC 8.1(a) and RPC 8.4(c).

The record is sufficient for us to find by clear and convincing evidence that respondent knowingly misappropriated escrow funds. He admitted using the funds for his own purposes. His defense – that his client told him the money was his as liquidated damages – is inconceivable, based on the communications that respondent had with Whole Foods in 2016.

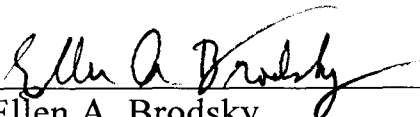
Accordingly, because respondent knowingly misappropriated escrow funds, disbarment is the only appropriate sanction, pursuant to the principles of Wilson and Hollendonner. Therefore, we do not address the appropriate

quantum of discipline for the additional ethics violations sustained in these matters.

Members Gallipoli and 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

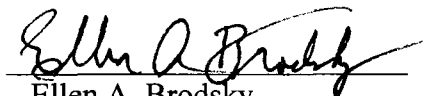
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Aiman Ibrahim
Docket No. DRB 18-394

Decided: August 7, 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