Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-204
District Docket No. XIV-2015-0308E

In the Matter of

Robert Joseph Jeney, Jr.

An Attorney at Law

Decision

Argued: September 19, 2019

Decided: January 14, 2020

Steven J. Zweig appeared on behalf of the Office of Attorney Ethics.

Raymond S. Londa 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 for a six-month suspension, filed by Special Ethics Master Robert A. Gaccione. The formal ethics complaint charged respondent with knowing misappropriation of trust account funds, a violation of RPC 1.15(a), the principles set forth in In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985), and

RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and failure to comply with the recordkeeping requirements of R. 1:21-6, a violation of RPC 1.15(d).

For the reasons set forth below, we determine to dismiss the knowing misappropriation charge and to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1984. At the relevant times, he was a partner in Jeney, Jeney & O'Connor, LLC, a Scotch Plains law firm.

In 2012, respondent received a reprimand for failure to safeguard the proceeds from the sale of his matrimonial client's marital home, after he disbursed monies contrary to the terms of a property settlement agreement, a violation of RPC 1.15(a). In re Jeney, 208 N.J. 591 (2012).

The facts are as follows.

Respondent became a sole practitioner in 1992. In 1995, the Office of Attorney Ethics (OAE) conducted a random audit of respondent's attorney books and records. According to respondent, the audit uncovered outstanding trust account checks and respondent's failure to perform required three-way reconciliations of his attorney trust account. Consequently, respondent hired an accountant, Robert Gelman, to review his attorney books and records and to assist him in avoiding future recordkeeping issues.

In 2000, respondent's wife, Carol A. Jeney, Esq. (Carol), became his law partner, and, for the next ten years, she carried out the firm's recordkeeping responsibilities. In 2010, Sarah O'Connor, Esq., became a partner and assumed the firm's recordkeeping obligations.

On October 2, 2014, the OAE notified the Jeney firm that a random audit would take place on October 29. Respondent testified that, when the firm received notice of the random audit, O'Connor confessed that she "hadn't done the books in over a year" because, due to Carol's father's health issues, O'Connor had been handling Carol's cases in addition to her own.

Respondent and Carol, thus, began to review the firm's records. Among other things, respondent looked for a bill in each file. In the real estate matter at issue in this case, respondent and Carol determined that, despite the absence of a bill, he had taken a $6,047.60 fee from trust monies held in behalf of the sellers, who were not his clients. Respondent then replenished the trust account, in two deposits. On November 12, 2014, he deposited $4,500, followed by a $1,547.60 deposit twelve days later. On December 1, 2014, respondent informed the sellers' attorneys of the amount due to their clients, and disbursed the funds on December 16, 2014.

The random audit took place on December 2, 2014 and July 20, 2015. Respondent disclosed the improper disbursement in the real estate matter to the

OAE auditor, Karen Hagerman. Yet, when Hagerman reviewed the books, she asserted that respondent owed $8,177.27 to the sellers, which, respondent testified, he still does not understand. Nevertheless, "we just put extra money in and I disbursed it to the sellers."[1]

The random audit uncovered a number of recordkeeping deficiencies, which led to the RPC 1.15(d) charge. Respondent admitted the recordkeeping violation, which was based on the Jeney firm's failure to comply with the following provisions of R. 1:21-6:

a. R. 1:21-6(a)(1): funds held as executor, guardian, trustee or in any other fiduciary capacity were not held separately from attorney trust account funds; the attorney trust account held funds unrelated to the legal practice (also RPC 1.15(a));

b. R. 1:21-6(a)(2): funds received for professional services were not deposited in the attorney business account; the attorney business account contained an improper designation;

c. R. 1:21-6(b): imaged process checks for the attorney business account were not limited to two checks per page;

d. R. 1:21-6(c)(1)(A): funds were transferred electronically from the attorney trust account;

e. R. 1:21-6(c)(1)(H): the firm failed to prepare and

[1] The disbursement of the $2,129.67 difference between $8,177.27 and $6,6047.60 is not reflected on the ledger.

reconcile a schedule of clients' ledger account balances; and

f. R. 1:21-6(d): client ledger cards reflected debit balances; there were inactive trust ledger balances; and old trust account checks remained outstanding.

Respondent testified that all recordkeeping violations have been rectified, that the Jeney firm has, once again, retained Gelman as its accountant, and that the firm has established a system that will prevent a recurrence of the violations.

In addition to the recordkeeping violations, the ethics complaint charged respondent with knowing misappropriation of an unspecified amount of proceeds from the real estate transaction mentioned above. Respondent admitted most of the facts underlying the charge, but denied that he had knowingly misappropriated the funds at issue.

Specifically, on March 5, 2010, respondent represented Milton Floyd and Latoya Foster (the Floyds)[2] in the purchase of a residential property in Plainfield, New Jersey. The sellers were divorced, and each was represented by counsel. According to the retainer letter, respondent's fee for "a normal closing" was $1,000. For a non-routine closing, he charged an additional $325 per hour.

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[2] At some point, Latoya Foster changed her last name to Floyd and, thus, we refer to them, collectively, as the Floyds and, individually, as Latoya and Milton.

Respondent was the settlement agent for the transaction and, thus, prepared the HUD-1, which reflected his receipt of a $1,295 legal fee from the Floyds.[3] According to the HUD-1, the sellers were to receive $38,774.24 in proceeds from the sale of their property. Due to a dispute regarding distribution of the monies, respondent agreed to withhold $10,000 from the proceeds, pending instructions from the sellers' divorce attorneys.

Respondent testified that he has handled hundreds of real estate closings during his career, but none was like this closing. He asserted that, although a real estate closing usually takes no longer than an hour-and-a-half, the Plainfield property closing took all day because the sellers "were vehemently fighting back and forth." The sellers' attorneys were worse, he claimed, as they fought "like cats and dogs."

In addition to the $10,000 escrow, respondent escrowed $2,250, representing a "holdback escrow" earmarked for the procurement of a certificate of occupancy for the property. According to an agreement between the Floyds and their lender, the Floyds would receive the monies after they performed certain repairs on the property.

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[3] The ledger card for the transaction reflected a $1,555 fee to respondent. Respondent attributed the $260 difference to certain costs incurred in the representation, such as copying and faxing, which could not be itemized on the HUD-1, as the buyers had an FHA mortgage. Respondent testified that he had explained this to the Floyds.

Respondent acknowledged that the HUD-1 did not reflect the $10,000 escrow, and that he had failed to update the HUD-1 to reflect additional funds owed to the sellers after they had satisfied an outstanding judgment, just prior to the closing. Respondent simply did not know "what went wrong with this HUD," saying that, when the $6,047.60 "came to light," he spent three days "trying to figure out what went wrong."

On January 26, 2011, ten months after the closing, respondent asked the sellers' divorce attorneys about the status of the parties' issues, as he wanted to close out the $10,000 escrow. On that same date, he reminded the Floyds that he continued to hold the $2,250 repairs escrow.

As of April 1, 2014, more than four years after the closing, the escrows remained outstanding. On that date, respondent informed the sellers' attorneys that he could no longer hold the funds in escrow, and that, unless he received joint instructions for disbursement by April 15, 2014, he would send half to each attorney, minus $400 for the time he had spent on the matter. Ultimately, respondent received instructions, and, on June 21, 2014, disbursed $400 to himself, followed by a $4,800 disbursement to each of the sellers, two days later.

Respondent testified that the lender never replied to his attempts to seek its authorization to release the $2,250 to the Floyds. On June 25, 2014, respondent disbursed the funds to the Floyds, after they had provided him with

a copy of the contractor's invoice and their canceled check.

After the above disbursements, a $6,047.60 balance remained on the ledger for the Plainfield property transaction. Respondent, who had never encountered an outstanding ledger balance after a real estate transaction, did not believe that the monies were due to the parties. Thus, on June 25, 2014, he zeroed out the ledger by taking the $6,047.60 as his fee and depositing the monies in his personal bank account. He did not tell O'Connor what he had done.

Respondent stated that depositing the fee directly into his personal account "was just a sloppy way of getting things done for time constraints." He explained that, even though he had bypassed the business account, he could keep a record of the firm's income by searching either the term "payee" or his name in the trust account computer program, which would identify the payment.

Respondent testified that he believed that the monies did not belong to the sellers because their lawyers never questioned the $6,000, either at the closing or at any time up to the date of the random audit. He explained:

> I have never seen a seller leave a closing without their money to the penny. When I said I spent days going over this to see what had happened, I never even considered looking at the seller's [sic] side because I couldn't envision – 30 years of doing real estate, sellers walk out with[out] their money. I never looked at it and I kept beating myself up looking at the lender funding, the buyer side.

[T109-13 to 19.][4]

Latoya and respondent testified that the buyers, who had paid respondent a $1,295 fee, were not owed monies from the purchase. Respondent claimed that, if he did not believe that the money belonged to him, he would have contacted the clients. Moreover, no one had contacted him about the funds in the four years since the transaction had taken place.

Respondent, thus, assumed that the $6,047.60 represented his fee for work performed on other matters for the Floyds. For example, respondent recalled that, after the closing, he had spoken to both Floyds about the possibility that they could lose their house to foreclosure. He also had a conversation with Latoya regarding a patent matter. According to respondent, he did not create separate files for the additional work, because it took place within the same period as the closing.

Both Latoya and Milton testified that respondent represented them only in the purchase of the Plainfield property. Although, following the closing, they experienced difficulty paying their mortgage and had some telephone conversations with respondent to explore their options, he did not bill them for the calls.

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[4] "T" refers to the September 18, 2017 hearing transcript.

Respondent acknowledged that he should have looked through the Floyd/Foster file and that, had he done so, he would have seen that he was not owed more than $6,000 for his work on that matter. Indeed, when he took the monies, he could not remember what his clients looked like. He stated that he must have confused them with other clients who "were having problems." He "was handling a lot of stuff at that point," in addition to "what was going on in our life."

Respondent neither sent the Floyds a bill for the $6,047.60 nor informed them that he was taking the funds as his fee. Specifically,

> I mean, post-closing I did a tremendous amount of work, but I wasn't sitting and thinking, "oh, that's what this is." I honestly thought I did something with their foreclosure because they were having other problems and I mixed them up with other people.
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> [T44-11 to 15.]

When respondent examined the Floyd file in anticipation of the random audit, he found no foreclosure file. According to respondent, "that's when I knew something was bad." Because respondent believed that the funds did not belong to either the sellers or the buyers, by letter dated November 4, 2014, he asked the lender to assist him in determining to whom the funds belonged. Presumably, the lender told respondent that the monies belonged to the sellers because, on December 1, 2014, respondent informed the sellers' attorneys of the

$6,047.60 balance owed to their clients and asked for instructions regarding disbursement.

When the special master asked respondent whether, at the time he took the fee, he believed that he had performed sufficient work on the Foster/Floyd matter to justify doing so, respondent replied "yes." Respondent denied ever misappropriating trust account funds or having any intent to do so. Although respondent acknowledged that it never should have happened, he attributed his action to negligence on his part.

In mitigation, respondent testified about "what was going on in [his and Carol's] life at that time." Respondent's father-in-law was "very sick" and living alone in his home. He refused to go to a nursing home, and Carol believed that he would kill himself if they forced him out of the house. Consequently, every day, respondent and Carol spent substantial time providing care to Carol's father, including preparing his meals and meeting his needs. At the end of the Jeneys' workday, they returned to Carol's father's house, where they stayed until ten o'clock, because he did not want to be alone. Respondent testified:

> It was such a stress and a strain on our time that at this time period things weren't done with as much time as could have been expended on them. So when I closed out the escrow and I saw the money in there, in my mind – and I hadn't seen these people in four years. I probably only saw them once at the closing. I mixed them up with other couples because I was doing all kinds of foreclosure mediations and defenses and

> bankruptcies for people similarly situated as them. And I know I had talked to them over the years about their problems and I just said, "This must be a fee for that work." Did I look and go beyond that? No.
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> [T42-12 to 22.]

Also, in mitigation, respondent testified about his service to the bar, the community, and the country. He participated in a civil practice inn of court. He was a member of the Union County Judicial and Prosecutorial Appointments Commission, a matrimonial ESP panelist, and a long-term participant in the mock trial program. Over the years, respondent had performed a significant amount of pro bono work for clients who could not afford legal services. While in the military, he was assigned to unspecified duties in respect of President Nixon's helicopter and President Ford's limousine.

Respondent also offered the testimony of three character witnesses. Jeffrey Clar, the executive director of the Union County Bar Association, testified that he knew respondent as the former president of the bar association and as his personal attorney. As of Clar's September 18, 2017 testimony, respondent was the current winner of the bar association's "Professional Attorney of the Year" award. Clar testified that respondent's honesty and integrity have "never been in question." He conceded, however, that he did not have personal knowledge of the facts underlying the ethics charges brought against respondent.

Ann Marie Merritt, Esq., the president of the Union County Bar Association, testified that she knew respondent through that organization, that she has referred work to him, and that she has asked his advice "on a lot of things." Despite respondent's prior reprimand, Merritt opined that he had "an outstanding reputation for being . . . one of the most honest people . . . out there and especially in our county." Merritt had some familiarity with the underlying ethics charges against respondent, but that did not change her opinion of him.

Marc Robert Brown, Esq., a New Jersey State Bar Association trustee, testified that he had been very active in the Union County Bar Association, as a past president, among other officer positions, and as chair of various committees. Over the years, Brown had worked with respondent as co-counsel, and he was well familiar with his bar activities.

Brown had "a tremendous amount of respect" for respondent, whom he described as a "straight shooter," who was reasonable during negotiations and always worked in the best interests of his clients. Although Brown did not know why respondent was the subject of an ethics proceeding, generally speaking, he held respondent in the highest regard.

Respondent pointed out that nobody had suffered economic harm as a result of the mistake. Indeed, respondent recounted, when the attorney for one of the sellers learned about the underpayment, he called respondent, laughing

and remarking that he could not believe respondent had failed to disburse so much money.

Although the special master found that respondent violated RPC 1.15(d), his report focused almost exclusively on the knowing misappropriation charge. The special master recognized that the theory of the OAE's knowing misappropriation claim rested on willful blindness, which he described as follows:

> The question is whether Respondent's failure to verify that the money did not belong to him by checking with the sellers or his client [sic] or better yet by reviewing the file amounted to a deliberate effort by him to remain ignorant of the facts.
>
> [SMR8.] [5]

Prior to reaching his conclusion, the special master reviewed the myriad of difficulties with the closing, including respondent's failure to update the HUD-1 to reflect the sellers' satisfaction of an outstanding judgment, the sellers' failure to detect that omission, the establishment of the two escrows, and the length of time that it took respondent to resolve them.

The special master examined whether respondent "knew that he had not done work for the buyers post-closing that justified a payment to him" of

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[5] "SMR" refers to the undated special master's report and recommendations.

$6,047.60. In this regard, the special master noted that, if respondent had reviewed the file, he would have realized that he was not entitled to a more than $6,000 fee. The special master detailed respondent's discovery of the issue on receipt of the random audit notice and his efforts to rectify the problem, including his correspondence with the lender. The special master noted that this closing was more difficult than the average closing, as the sellers, who could not agree on the distribution of the proceeds, argued vehemently, and their attorneys fought like "cats and dogs."

The special master acknowledged the discrepancies in respondent's explanations for his belief that he was entitled to the monies as legal fees. The special master also pointed out that, prior to the hearing, respondent had made no mention of his father-in-law's illness and its effect on him and the practice.

In short, the special master concluded that, "at a bare minimum, the Respondent was grossly negligent, but the circumstances here are far from the typical Wilson case," as respondent's actions did not constitute "an outright taking of money." Thus, for respondent's violation of RPC 1.15(a), (b) (failure to promptly deliver funds belonging to a client or third person),[6] and (d), the special master recommended a six-month suspension.

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[6] The formal ethics complaint did not charge respondent with having violated RPC 1.15(b).

Following a de novo review of the record, we are satisfied that the special master's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

In respect of the recordkeeping charge, RPC 1.15(d) requires an attorney to comply with the provisions of R. 1:21-6. At the random audit of the Jeney firm's books and records, the OAE uncovered multiple violations of R. 1:21-6. The violations were identified and explained to respondent, who admitted all of them.

Moreover, the testimony established, clearly and convincingly, that the Floyd/Foster ledger card had an inactive balance for more than four years; that three-way reconciliations had not been performed for at least one year; and that respondent had deposited the $6,000 "fee" in his personal account, instead of the attorney business account. He, thus, violated RPC 1.15(d) in numerous respects.

We agree with the special master's determination that the record lacks clear and convincing evidence that respondent knowingly misappropriated $8,177.27 in trust account funds relating to the Floyd/Foster real estate transaction.

In In re Wilson, 81 N.J. 451, 455 n.1 (1979), the Court described knowing misappropriation 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.

Six years later, the Court elaborated:

> The misappropriation that will trigger automatic disbarment under *In re Wilson,* 81 *N.J.* 451 (1979), disbarment that is "almost invariable," *id.* at 453, 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 is 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. To the extent that the language of the DRB or the District Ethics Committee suggests that some kind of intent to defraud or something else is required, that is not so. To the extent that it suggests that these varied circumstances might be sufficiently mitigating to warrant a sanction less than disbarment where knowing misappropriation is involved, that is not so either. The presence of "good character and fitness," the absence of "dishonesty, venality, or immorality" – all are irrelevant. While this Court indicated that disbarment for knowing misappropriation shall be "almost invariable," the fact is that since *Wilson*, it has

been invariable.

[In re Noonan, 102 N.J. 157, 159-60 (1986).]

In a real estate transaction fraught with problems before, during, and for many years after, respondent asserts that, when he took the $6,047.60, he believed that the monies must have belonged to him because, essentially, no one, especially the seller, walks away from a real estate transaction without every penny due. Further, although respondent had received a fee from the buyers in the transaction, he recalled having provided services to them in respect of other matters and, he testified, under such circumstances, he does not always open a new file. Thus, he assumed that the funds represented fees that the buyers owed for other work that he had undertaken in their behalf, after the closing.

The OAE's knowing misappropriation claim rests on the willful blindness theory. In In re Skevin, 104 N.J. 476, 486 (1986), cert. denied, 481 U.S. 1028 (1987), the Court defined willful blindness as "a situation where the party is aware of the highly probable existence of a material fact but does not satisfy himself that it does not in fact exist." Ibid.

Typically, willful blindness cases involve attorneys who intentionally design recordkeeping systems and procedures that will insulate them from knowledge of mismanagement of their accounts. See, e.g., In re Fleischer, In re Shultz, and In re Schwimer, 102 N.J. 440, 447 (1986) (disbarment for three

attorneys who, because their practice did not generate sufficient income to pay firm expenses and to support themselves, deliberately combined their attorney trust and business accounts, knowing that they would be using trust funds for personal and professional use). By contrast, attorneys who invade client, escrow, or other trust funds due to negligent – even reckless – recordkeeping practices, may avoid disbarment. See, e.g., In re Kim, 222 N.J. 3 (2015) (six-month suspension imposed on attorney whose recordkeeping practices were "so horrendous as to be reckless," thus placing his clients' funds at great risk; among other things, the attorney did not perform monthly three-way reconciliations, but, instead, claimed that he kept track of his trust account funds in his head).

Although abominable recordkeeping practices may remove a case from the realm of knowing misappropriation, the Court has rejected the notion that an attorney "who just walks away from his fiduciary obligation as safekeeper of client funds can expect . . . an indulgent view of any misappropriation." In re Johnson, 105 N.J. 249, 260 (1987). In other words, the Court "will view 'defensive ignorance' with a jaundiced eye." Ibid. Consequently, "[t]he intentional and purposeful avoidance of knowing what is going on in one's trust account will not be deemed a shield against proof of what would otherwise be a 'knowing misappropriation'." Ibid.

In so ruling, the Court was confident that, "within our ethics system, there

is sufficient sophistication to detect the difference between intentional ignorance and legitimate lack of knowledge." Ibid. For example, in In re Armour, 224 N.J. 387 (2016), the Court disbarred an attorney who, though aware of his bookkeeper's previous misuse of client monies, turned a blind eye to the activity in the trust account, thus permitting the bookkeeper to continue misusing client funds. In the Matter of Raymond Armour, DRB 15-075 (October 28, 2015) (slip op. at 68-69).

This case is distinguishable from the willful blindness precedent. Respondent did not design a recordkeeping system that would insulate him from knowing what was going on with his trust account. He did not intentionally and purposely avoid knowing what was going on in his trust account. He did not engage in horrendous recordkeeping practices. Rather, respondent botched a real estate closing, which, unbeknownst to him, left $6,000 on the ledger and in his attorney trust account. Thus, respondent's primary act of misconduct was failing to fulfill his duties as an escrow and settlement agent, which included preparing an accurate HUD-1 and disbursing the proper funds to the proper parties. See, e.g., In re Soriano, 206 N.J. 138 (2011) (censure imposed on attorney who failed to fulfill his duties as the settlement agent in a fraudulent real estate transaction; under the terms of the contract, the attorney was to maintain certain funds in escrow, but, instead, he disbursed the monies directly to the buyer to hold; the

attorney also violated RPC 1.2(d) (assisting a client in fraudulent conduct), RPC 1.5(b) (failing to explain the rate or basis of a fee in writing), RPC 1.7 (conflict of interest), RPC 1.15(b) (failing to deliver funds promptly to clients), RPC 4.1(a)(1) (making a false statement of material fact or law to a third person), RPC 8.4(a) (violating the Rules of Professional Conduct), and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation)). Accordingly, as the special master observed, the real issue is whether, upon discovering the $6,000 remaining on the ledger, it was reasonable for respondent to assume that the monies represented a fee due to him. This issue has nothing to do with the Jeney firm's recordkeeping system or practices, particularly as they concern the trust account.

As a starting point, we note that no attorney has ever been disbarred for taking client funds on the reasonable belief of entitlement to the monies. See, e.g., In re Frost, 156 N.J. 416 (1998) (two-year suspension imposed on attorney who, among other serious improprieties, took his fee from the proceeds of his client's refinance, based on the erroneous belief that he had reached an agreement with one of the client's creditors to settle an outstanding judgment). See also In re Kim, 222 N.J. 3; In the Matter of Daniel Donk-Min Kim, DRB 14-171 (December 11, 2014) (slip op. at 60-61).

This case did not involve a fraudulent real estate transaction. Respondent

did not make intentional misrepresentations on the HUD-1. Rather, he failed to update the HUD-1 after the sellers had satisfied the outstanding judgment. Moreover, the transaction itself was contentious and, ultimately, led to his agreement to retain a total of $12,250 in escrow for the parties. Despite respondent's attempts to prompt the parties to resolve the underlying issues, the funds languished in the trust account for four years, until respondent finally insisted that the issues be resolved.

Respondent believed that no monies were owed to the buyers, because they had paid a fee to him at the time of the closing, and buyers do not, as a rule, receive monies on the purchase of a property. Moreover, respondent believed that the funds did not belong to the sellers because, as he rationally noted, sellers do not conclude real estate closings without making sure that they have received their proceeds. Furthermore, the sellers were represented by separate counsel. Finally, during that four-year period, respondent had received no notice from anyone, including lenders, that funds were owed to them.

In hindsight, respondent should have diligently reviewed the file and the HUD-1 to determine the source of the $6,000. However, in light of the parties' silence, the passage of time, and his recollection (though fuzzy and inaccurate) of having discussed other matters with the buyers, we cannot conclude that his erroneous assumption that the monies belonged to him was anything more than

an erroneous assumption.

Notably, at no time did respondent exhibit any behavior suggesting a nefarious purpose in disbursing the funds to himself. First, he obviously understood how to handle escrow monies, as evidenced by the procedures he followed prior to releasing the $10,000 and $2,250 escrows. Second, after respondent had received notice of the random audit, examined the firm's books and records, and discovered that the $6,000+ disbursement was not accompanied by a bill, he immediately contacted the lender and asked for assistance in determining the true owner of the monies, replenished the account, and disbursed the funds to the sellers. He did not alter existing documents, and he did not fabricate documents to conceal that he had taken the monies and used them. Finally, he brought the discrepancy to the OAE's attention. In short, this is not the behavior of someone who had knowingly misappropriated monies.

To be sure, respondent should have fully investigated the $6,000 discrepancy when he uncovered it, but, given the unique circumstances of the real estate transaction, the silence of all concerned in respect of the $6,000, and the memories floating around in his mind, it was not entirely unreasonable for him to assume that the funds belonged to anyone other than himself. In our view, thus, the knowing misappropriation charge falls.

In sum, respondent violated RPC 1.15(d). We determine to dismiss the

allegation that respondent knowingly misappropriated trust account funds. The only remaining issue is the appropriate quantum of discipline to be imposed for respondent's misconduct.

Typically, recordkeeping violations that do not cause the misappropriation of trust account funds result in the imposition of an admonition. See, e.g., In the Matter of Andrew M. Newman, DRB 18-153 (July 23, 2018) (attorney failed to maintain trust or business account cash receipts and disbursements journals, proper monthly trust account three-way reconciliations, and proper trust and business account check images; in mitigation, we considered the attorney's unblemished disciplinary record in his thirty-three years at the bar and his admission of wrongdoing) and In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015) (attorney did not maintain trust or business receipts or disbursements journals, or client ledger cards; did not properly designate the trust account; made disbursements from the trust account against uncollected funds; withdrew cash from the trust account; and did not maintain a business account; in mitigation, we considered the attorney's unblemished disciplinary history and admission of wrongdoing).

In this case, discipline greater than an admonition is warranted for respondent's recordkeeping violations. First, he was cited for recordkeeping deficiencies in 1995 and, thus, should have been mindful of his obligation to

keep the firm's attorney books and records in order. Second, in 2012, he received a reprimand for his failure to abide by the terms of a property settlement agreement in his role as the escrow agent in a client's real estate transaction. In light of respondent's wholly avoidable inaccuracies on the HUD-1 and his assumption about his entitlement to the $6,047.60, we determine to impose a reprimand for his violation of RPC 1.15(d).

Vice-Chair Gallipoli and Member Zmirich voted to impose a censure on respondent. Member Boyer did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bruce W. Clark, Chair

By: _____
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Robert Joseph Jeney, Jr.
Docket No. DRB 19-204

Argued: September 19, 2019

Decided: January 14, 2020

Disposition: Reprimand

Members	Reprimand	Censure	Recused	Did Not Participate
Clark	X			
Gallipoli		X		
Boyer				X
Hoberman	X			
Joseph	X			
Petrou	X			
Rivera	X			
Singer	X			
Zmirich		X		
Total:	6	2	0	1

Ellen A. Brodsky
Chief Counsel