

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-150
District Docket No. XIV-2020-0047E

In the Matter of
Sanghwan Hahn
An Attorney at Law

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Decision

Decided: April 16, 2021

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 (the OAE), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with violations of RPC 1.7(a) (conflict of interest); 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 1.15(b) (failure to promptly disburse client funds); RPC 3.4(c) (disobeying a court order); RPC 5.5(a)(1) (practicing law while suspended); RPC 8.1(b) (two instances – failure to cooperate with disciplinary authorities);¹ 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 determine that respondent knowingly misappropriated client and escrow funds and recommend to the Court that he be disbarred.

Respondent was admitted to the New Jersey bar in 1994 and to the New York bar in 1996.

On May 4, 2017, the Court suspended respondent for three months for gross neglect; failure to communicate the basis or rate of the fee in writing; conducting an improper business transaction with a client; failure to safeguard funds and negligent misappropriation of funds; recordkeeping violations; making a false statement of material fact in connection with an ethics investigation; and conduct involving dishonesty, fraud, deceit or

¹ Due to respondent's failure to file an answer to the formal ethics complaint, the OAE amended the complaint to include the second RPC 8.1(b) charge.

misrepresentation. In that matter, respondent's poor recordkeeping practices led to negligent misappropriation of client funds. Among other misconduct, he improperly obtained a loan from a client and then misrepresented to the OAE the purpose of the loan. Respondent also certified to the accuracy of a HUD-1 settlement statement, which contained several inaccuracies and did not properly reflect the transaction. In re Hahn, 228 N.J. 630 (2017).

On September 6, 2019, in another default matter, respondent was censured for failure to cooperate with disciplinary authorities and conduct prejudicial to the administration of justice, after he failed to file an affidavit of compliance, as R. 1:20-20 requires. In re Hahn, 239 N.J. 529 (2019).

Respondent remains suspended to date. Further, since November 17, 2014, he has been administratively ineligible to practice law based on his failure to comply with New Jersey continuing legal education requirements.

Service of process was proper. On June 26, 2019, the OAE sent a copy of the complaint, by certified and regular mail, to respondent's home address. The certified mail receipt was returned, marked "return to sender." The regular mail was not returned.

On July 29, 2019, the OAE sent a letter to respondent at his home address, by certified and regular mail, informing him that, unless he filed 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 record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). Both the regular mail and the certified mail receipt were returned, marked “forward time expired return to sender.”

On September 21 and 23, 2019 respectively, the OAE served respondent with the complaint by publication, in accordance with R. 1:20-4(d), in The Record and the New Jersey Law Journal.

As of November 14, 2019, 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.

However, by letter dated January 27, 2020, the Office of Board Counsel administratively dismissed the matter “without prejudice to recertification of the record [by the OAE] should respondent fail to timely file a verified answer to the complaint, after it is properly served on him at his current home address.” Chief Counsel observed that the mail returned by the post office listed respondent’s new home address, and that respondent should have been served at that current address.

On January 31, 2020, the OAE re-docketed the matter and served respondent, by certified and regular mail, at his current home address. On February 7, 2020, the certified mail return receipt was received at the OAE with a signature that appeared to be respondent's, indicating a February 5, 2020 delivery date. The regular mail was not returned.

On April 17, 2020, the OAE sent another letter to respondent, by certified and regular mail, as well as by e-mail, to his current home and e-mail addresses, informing him that, unless he filed 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 record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). The certified mail receipt was returned to the OAE with a signature that appeared to be respondent's, indicating an April 25, 2020 delivery date. The regular mail and e-mail were not returned.

As of June 8, 2020, 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 again certified this matter to us as a default.

We now turn to the allegations of the complaint.

As noted, effective May 4, 2017, respondent was suspended from the practice of law for three months. In re Hahn, 228 N.J. 630. Respondent thereafter failed to comply with the requirements of R. 1:20-20 and, thus, has not been reinstated.

Despite respondent's suspended status, on August 31, 2018, the OAE received notice from the New Jersey Lawyers' Fund for Client Protection (CPF) that three claims against respondent had been filed, all alleging that he had engaged in the practice of law while suspended. On October 15, 2018, in response to the notice from the CPF, the OAE sent a letter to respondent, by certified and regular mail, directing him to appear for a November 2, 2018 demand interview. The certified letter was returned as "unclaimed;" however, the regular mail was not returned. Respondent failed to reply to the OAE. Also on October 15, 2018, the OAE sent a letter to respondent, by certified and regular mail, notifying him that it intended to inform the Bergen County Prosecutor's Office that he was engaging in the unauthorized practice of law, a criminal offense. The certified mail return receipt was returned, with a signature that appeared to be respondent's, indicating a delivery date of October 23, 2018.

Meanwhile, on October 9, 2018, the OAE filed with the Court a petition for emergent relief, seeking to freeze respondent's attorney trust account (ATA)

and attorney business account. On October 31, 2018, the Court granted the OAE's petition.

After completing its investigation of the three CPF referrals, the OAE charged respondent with misconduct via the present complaint.

The Ramapo Valley Road Transaction

James Lee, the Managing Member of St. Francis Group, LLC (the St. Francis Group), and the seller of a nail salon in Oakland, New Jersey, reported to the CPF that respondent failed to disburse \$10,000 in escrow funds owed to Lee following a real estate closing.

The OAE investigation revealed that, on July 7, 2017, respondent represented the buyer, Song S. Hoobler, in the purchase of property on Ramapo Valley Road from the seller, the St. Francis Group. Respondent served as the escrow agent, and received from Hoobler a cashier's check for \$20,000, comprising \$5,000 as creditor liability and gift certificate escrow, \$10,000 as satisfaction of a pending lawsuit, and \$5,000 as bulk sale tax escrow to be applied to the purchase price of the business, pursuant to the contract of sale. Three days later, on July 10, 2017, respondent deposited the \$20,000 in his ATA, pursuant to the terms of an escrow agreement. On August 3, 2017, respondent

disbursed \$5,000 to the seller, leaving a \$15,000 balance that he was required to hold, inviolate, in escrow.

However, throughout August 2017, the balance in respondent's ATA account decreased below \$10,000 and remained below \$15,000 until December 2017. By that time, respondent had deposited \$9,300 into his ATA, representing security deposits in two unrelated client matters.

On December 5, 2017, respondent issued a \$2,490.54 ATA check to the seller, the St. Francis Group, and, on December 21, 2017, issued a \$2,509.46 ATA check to the buyer, Hoobler. Following those disbursements, which totaled \$5,000, respondent's ATA balance, for the Ramapo Valley Road transaction alone, should have been \$10,000, and should have included an additional \$9,300 for the two unrelated security deposits. However, on January 31, 2018, his ATA balance was only \$8,346.47.

Respondent, thus, failed to hold the escrow funds in his ATA, inviolate, as he was required to do. Neither the St. Francis Group nor its attorney had authorized respondent's use of those funds for other purposes, nor has the St. Francis Group received the \$10,000 it is owed. Based on the above facts, the OAE alleged that respondent committed the knowing misappropriation of client and escrow funds.

The Premier Farmers Market Transaction

Edward K. Han, the buyer of a grocery store, reported to the CPF that respondent, who served as the seller's attorney and the escrow agent for the transaction, improperly withheld \$45,000 in escrow funds owed to Han, despite court orders directing respondent to release the funds to Han.

The OAE's investigation revealed that, in 2016, respondent represented Premier Farmers Market, Inc. (PFM) in the sale of its grocery business to a buyer, Michelle Ra. On February 2, 2016, Ra provided respondent with a check for \$7,000, representing an earnest money deposit for the purchase. Respondent deposited the \$7,000 in his ATA.

The transaction stalled and Ra discovered that PFM had contracted to sell the business to a third-party, Han. Ra, through her attorney, filed suit in the Superior Court of New Jersey, Chancery Division, Bergen County, seeking to void the sale to Han and to enforce her purchase agreement. Pursuant to a November 3, 2016 settlement agreement, the Honorable Menelaos W. Toskos, J.S.C. appointed respondent as the escrow agent for the settlement, and ordered him to hold the total sale price of \$105,000 in his ATA. Judge Toskos also ordered respondent to immediately release \$45,000 of the \$105,000 held in his

ATA to Han, representing damages Han had incurred from the voiding of his good-faith attempt to purchase the store.

On November 3, 2016, Ra issued a check to respondent for \$98,000, which, along with the previous \$7,000 she had advanced, comprised the \$105,000 sale price. The next day, November 4, 2016, respondent deposited Ra's \$98,000 in his ATA. On November 7, 2016, respondent disbursed a \$60,000 ATA check to "Eun K. Chang," representing sales proceeds to PFM. By the end of November 2016, respondent's ATA balance was \$82,087.42.

Although respondent should have maintained, inviolate, the \$45,000 he had been court-ordered to disburse to Han, by February 28, 2017, his ATA balance was only \$32,662.42, representing a \$12,000 shortfall on behalf of Han.

On May 1, 2017, Judge Toskos issued a second order instructing respondent to immediately disburse \$45,000 to Han. Respondent failed to comply with that order and, on October 16, 2017, Judge Toskos issued yet another order directing respondent to release the funds owed to Han, within ten days. Respondent was served with the order on January 25, 2018, but again failed to comply. For the month of October 2017, following the court's third order, respondent's ATA balance was between \$9,210.42 and \$9,346.47.

As of the date of the certification of the record in this matter, respondent had not disbursed to Han the \$45,000 that he had been court-ordered to safeguard and release. Neither Han nor his attorney had authorized respondent to use the funds for another purpose. Based on the above facts, the OAE alleged that respondent committed the knowing misappropriation of escrow funds.

The Pure Spa and Nail Gallery II Transaction

Bokki Lee, the seller of a nail salon in Tenafly, New Jersey, reported to the CPF that respondent, who served as the buyer's attorney and escrow agent for the transaction, failed to disburse to her \$2,000 in escrow funds due after the closing.

The OAE investigation revealed that, in this real estate transaction, respondent represented both the buyer, Byung Kun Jang, and the seller, Lee, in the sale of the Pure Spa and Nail Gallery II (Pure Spa), without obtaining his clients' informed, written consent to such a conflict. Moreover, the closing for the sale occurred on January 26, 2018, following respondent's 2017 suspension from the practice of law.

The terms of the transaction provided that, following the closing, respondent, as the escrow agent, would continue to hold \$2,000 of the sales

proceeds in his ATA. Ninety days after the sale, if no gift cards were presented to the salon following the closing, respondent was to release the \$2,000 in escrow funds to Lee. On May 31, 2018, Jang sent a letter to the CPF, confirming that, although the \$2,000 in escrow funds should have been released to Lee, Jang had been unable to contact respondent. Lee never received the \$2,000.

On November 8, 2018, when respondent's accounts were frozen, his ATA balance was only \$1,114, less than the \$2,000 that he was duty-bound to hold in escrow, inviolate, for Lee alone.

Moreover, on that date, respondent should have been holding at least \$57,000 in his ATA, including: \$10,000 for the St. Francis Group in the Ramapo Valley Road transaction; \$45,000 for Han, pursuant to the court order in the PFM transaction; and \$2,000 for Lee in the Pure Spa transaction. However, the OAE investigation revealed that, on numerous dates between January 2016 and August 2018, respondent's ATA balance was below that amount.

Moreover, between January 2016 and August 2018, respondent issued two ATA checks, totaling \$800, to himself. All other disbursements from his ATA were for unrelated matters. Respondent's clients had not authorized him to make disbursements from the funds that he was holding in his ATA for their respective transactions.

Based on the facts set forth above, the OAE alleged that respondent knowingly misappropriated escrow funds and practiced law while suspended. Specifically, during his suspension, which was effective May 4, 2017, respondent routinely deposited client and escrow funds in his ATA and issued ATA checks. He failed to hold inviolate and to properly disburse the \$57,000 he held in the ATA for the three client matters detailed above. Finally, respondent failed to reply to ethics authorities regarding this disciplinary action.

Consequently, the formal ethics complaint charged respondent with having violated RPC 1.7(a) by engaging in a conflict of interest when he represented both the buyer and the seller in the Pure Spa transaction, without obtaining his clients' informed, written consent; RPC 1.15(a), RPC 8.4(c), and the principles of Wilson and Hollendonner by knowingly misappropriating client and escrow funds held in his ATA for the Ramapo Valley Road, PFM, and Pure Spa transactions; RPC 1.15(b) by failing to promptly disburse the funds he held in escrow for the three matters detailed above; RPC 3.4(c) and RPC 8.4(d) by violating Judge Toskos's multiple orders to release \$45,000 to Han; RPC 5.5(a)(1) (mistakenly cited as RPC 5.5(b)) by practicing law while suspended when he served as counsel in the Ramapo Valley Road and Pure Spa closings,

on July 7, 2017, and January 26, 2018, respectively;² and RPC 8.1(b) by failing to cooperate with disciplinary authorities in the investigation of these matters.

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).

We find that, by invading client and escrow monies held in his ATA for the Ramapo Road, Premier Farmers Market, and Pure Spa transactions, without the consent or authorization of his clients or relevant third parties, respondent knowingly misappropriated client and escrow funds, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner.

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.

² Although the text of the complaint alleged that respondent also engaged in conduct prejudicial to the administration of justice by practicing law while suspended, the complaint did not charge respondent with having violated RPC 8.4(d) in this regard.

[In re Wilson, 81 N.J. 455 n.1.]

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’ . . . 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 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 presenter must produce 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 principle also applies to other funds that the attorney is to hold inviolate, such as escrow funds. In re Hollendonner, 102 N.J. 21 (1985).

In Hollendonner, the Court extended the Wilson disbarment rule to cases involving the knowing misappropriation of escrow funds. The Court noted the “obvious parallel” between client funds and escrow funds, holding that “[s]o akin is the one to the other that henceforth an attorney found to have knowingly misused escrow funds will confront the [Wilson] disbarment rule” In re Hollendonner, 102 N.J. at 28-29.

In the Ramapo Valley Road transaction, respondent signed an escrow agreement outlining the terms of his fiduciary duties to both the buyer and seller. Yet, after depositing the \$20,000 earnest money in his ATA, respondent failed to safeguard the funds. After disbursements, respondent should have maintained a \$10,000 balance of the escrow funds; however, his ATA balance was reduced below that amount.

In the Premier Farmers Market transaction, the Superior Court ordered respondent to hold the total sale price of \$105,000 in escrow for the parties, and to release \$45,000 of that escrow to Han. Respondent failed to safeguard the funds, and, thus, was not able to make the court-ordered disbursement of

\$45,000. Moreover, despite two court orders directing him to release \$45,000 to Han, respondent did not comply.

Finally, in the Pure Spa transaction, respondent did not comply with his fiduciary duties, set forth in the escrow agreement, to hold \$2,000 in his ATA, for release to Lee ninety days after the transaction.


We find that the record clearly establishes that respondent served as both an attorney and an escrow agent in each of the three transactions detailed above. In each transaction, he deposited client and escrow funds in his ATA and failed to maintain those client and escrow funds, inviolate, as he was required to do. Respondent's ATA balance decreased below the amounts that he was duty-bound to hold, for each of the three transactions, and at numerous points throughout the investigation period. Respondent did not have the authorization of his clients or third parties to use the funds held in his ATA.

Accordingly, because respondent knowingly misappropriated client and escrow funds, disbarment is the only appropriate sanction, pursuant to the principles of Wilson and Hollendonner. Therefore, we need not address the appropriate quantum of discipline for the additional ethics violations detailed above.

Members Joseph 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
Bruce W. Clark, Chair

By: 

Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Sanghwan Hahn
Docket No. DRB 20-150

Decided: April 16, 2021

Disposition: Disbar

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



Johanna Barba Jones
Chief Counsel