Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-228
District Docket No. XIV-2018-0493E

In the Matter of	:
Zak A. Aljaludi	:
An Attorney at Law	:

Decision

Decided: April 29, 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 (OAE), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with knowing misappropriation of client or escrow 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, deceit, fraud or misrepresentation); and with

having violated RPC 1.7(a) (conflict of interest); RPC 1.15(b) (failure to promptly deliver funds belonging to a client or third party); RPC 1.15(d) (failure to comply with the recordkeeping provisions of R. 1:21-6); RPC 5.5(a) (unauthorized practice of law – failure to maintain professional liability insurance while practicing as a limited liability company, as R. 1:21-1A(a)(3) requires); and RPC 8.1(b) (two instances – failure to cooperate with disciplinary authorities).[1]

For the reasons set forth below, we find that respondent knowingly misappropriated funds entrusted to him and recommend to the Court that he be disbarred.

Respondent was admitted to the New Jersey and New York bars in 2009. He formerly maintained a law office in Fairview, New Jersey, purportedly operating as a professional corporation.

On May 3, 2019, in lieu of a temporary suspension, the Court placed certain conditions on respondent, including his supervision by an OAE-approved attorney, a co-signatory for his trust account, and his full cooperation with the

[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.

OAE's investigation of his conduct. In re Aljaludi, M-830 September Term 2018 (May 3, 2019). On September 10, 2020, the Court temporarily suspended respondent for his failure to comply with the May 3, 2019 Order. In re Aljaludi, 243 N.J. 548 (2020).

Service of process was proper. On May 28, 2020 (prior to his temporary suspension), the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's office address of record. The certified letter was returned to the OAE, marked unclaimed, and the regular mail was not returned.

On July 2, 2020, the OAE sent a letter to respondent, by certified and regular mail, at the same office address, 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 letter was not delivered to respondent; according to the United States Postal Service tracking history, as of August 22, 2020, the letter was in transit to the OAE. The regular mail was not returned.

As of August 13, 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 certified this matter to us as a default.

We now turn to the allegations of the complaint.

Recordkeeping

On March 23, 2018, the OAE conducted a random audit of respondent's attorney books and records for the period comprising January 1, 2015 through February 28, 2018. The audit uncovered the following recordkeeping deficiencies:

a. No trust receipts journal [R.1:21-6(c)(l)(A)];

b. No trust disbursements journal [R.1:21-6(c)(l)(A)];

c. No business receipts journal [R.l:21-6(c)(l)(A);

d. No business disbursements journal [R.1:21-6(b)(l)(A)];

e. Client ledger cards not fully descriptive [R.l:21-6(c)(l)(B)];

f. Client ledger cards with debit balances [R.1:21-6(d)];

g. Inactive balances left in trust account [R.1:21-6(d)];

h. Old outstanding checks [R.1:21-6(d)];

i. Attorney personal funds commingled in the trust account [RPC l.15(a)];

j. Deposit slips with insufficient detail [R.1:21-6(c)(l)(H)];

k. No client identification on checks [R.1:21-6(c)(G)];

l. Professional corporation without malpractice insurance [R.1:21-1A(a)(3)];

m. Trust account records not maintained for seven years [R.1:21-6(c)(l)];

n. Improper business account designation on bank statements, checks and deposit slips [R.1:21-6(a)(2)];

o. Earned legal fees not deposited to business account [R.1:21-6(a)(1)];

p. Business account records not maintained for seven years [R.1:21-6(c)(1)]; and

q. No monthly trust account reconciliation with client ledgers, journals, and checkbook [R.1:21-6(c)(1)(H)].

[C¶6;Ex.1.] [2]

[2] "C" refers to the formal ethics complaint, dated May 22, 2020. "Ex." refers to the exhibits to the complaint.

On July 23, 2018, the OAE conducted a follow-up audit and determined that, as of January 1, 2015, respondent's attorney trust account had a balance of $6,656.22 in unidentified funds, which respondent was directed to identify and reconcile.

On August 29, 2018, the OAE again examined respondent's trust and business account records, which were "grossly incomplete" and not maintained in accordance with R. 1:21-6 and RPC l.15(d). Thus, the OAE's investigation continued, with subsequent demand audits on February 4, June 17, and October 18, 2019, and January 3, 2020. Each of the audit sessions raised additional questions, requiring supplemental explanations and records from respondent.

As of May 22, 2020, the date of the filing of the ethics complaint, respondent had failed to produce all the records that the OAE required. Moreover, the records that respondent did produce could not be reconciled and, without his full cooperation, the OAE has been unable to reconcile his trust account.

Despite the difficulty in reconciling respondent's trust account, the OAE determined that, on October 31, 2018, his trust account balance was $33,466.65.

Respondent's "Client Ledger Balance Summary" as of that date, however, reflected $182,861.21 in negative client balances, in fourteen client matters.[3]

Respondent failed to reconcile his trust account, to account for client funds, and to account for the negative client balances listed above, which he attributed to sloppy recordkeeping. According to the OAE, respondent was aware of the negative trust account balance, however, because he had repeatedly replenished the account with cash and with personal funds from a real estate commission and from his attorney business account, as further detailed below.

As of the date of the ethics complaint, respondent's trust account remained unreconciled, and he had failed to account accurately for each positive and negative client balance listed on the "Client Ledger Summary as of October 31, 2018."

Knowing Misappropriation: The Maldonado Note

On September 25, 2015, respondent arranged for his cousin, Feras Jaloudi, to lend $150,000 to Antonio Maldonado in connection with a privately-funded refinance of a New Jersey property in the municipality of West New York. The

[3] It is not clear from the record who prepared the client ledger summary.

loan enabled Maldonado to resolve an oil tank issue on the property and to maintain his wine business. The note required interest-only monthly payments, in the amount of $1,500, beginning October 1, 2015 and ending on September 30, 2016, the note's maturity date.

Respondent told the OAE that, prior to the Jaloudi loan transaction, he had tried to procure a loan for Maldonado through a "mortgage broker, hard money lenders and people [he] knew," but, because "the terms were harsh," he "contacted Feras Jaloudi who had agreed to loan Mr. Maldonado the money."

Despite respondent's efforts in behalf of Maldonado to procure the loan, he represented Jaloudi, and served as the settlement agent for the transaction, which took place on September 25, 2015. As detailed below, respondent falsely certified that the HUD-1 was a true and accurate account of all funds received and disbursed in behalf of his client, Jaloudi. According to the HUD-1, the disbursements included $5,844.28 to Crown Bank (line 1303); $10,783.75 for Taxes West New York (line 1304); $1,717.22 for HNSA sewer charges (line 1305); $20,000 for an environmental escrow (line 1306); $30,000 wired to Blurko Gorri (line 1307); and $25,000 wired to Gregoria Sat San Pablo (line 1308).

Despite respondent's personal involvement in arranging the $150,000 private loan, and the HUD-1 reflecting $150,000 as the principal amount of the loan, respondent's trust account bank records show that he deposited only $118,565, not $150,000, in respect of the loan. The $118,565 comprised the following deposits: $20,000 from "Legal 1031 Exchange Services Inc.;" $50,000 from Jaloudi; $34,000 in cash; respondent's business account check number 1462, in the amount of $5,000; and respondent's real estate commission from ARC Real Estate, in the amount of $9,565.

Respondent collected and disbursed the closing proceeds inconsistent with the materially inaccurate HUD-1 that he had prepared and executed under penalty of perjury. For example, despite the private nature of the loan, the HUD-1 listed $19,500 in purported lender-related expenses, including an $8,000 origination charge and a $2,500 rate lock fee, although respondent's bank records reflected no evidence of any such disbursements. According to the ledger card, after the closing, respondent made cash deposits, and disbursed $7,565 to Lourdes Vasquez for a "Referral Fee," which was not disclosed on the HUD-1.

Respondent claimed that he had "received a total of $118,565.00 with disbursements of $118,861.70 from the closing to 8/25/16 as the last disbursement." His financial records, however, reflect that, although respondent

received $118,565, the actual disbursements, made between September 9, 2015 and August 25, 2016, resulted in a -$296.73 client balance. The disbursements were as follows:

Maldonado - Refi Ledger Card

Date Posted	Check#	Payor/Payee	Receipt	Disbursement	Client Balance
					0
09/09/15	Wire		$20,000.00		$20,000.00
09/23/15	142	Feras Jaloudi	$59,000.00		$70,000.00
09/24/15		CASH	$ 8,000.00		$78,000.00
09/25/15		CASH	$ 8,800.00		$86,800.00
09/28/15	Wire	Bodegas Biurko Gorri Sa		$ 30,000.00	
09/28/15		Wire fee		$ 40.00	
09/28/15	Wire	Bordega Sat San Pablo		$ 25,000.00	
09/28/15		Wire fee		$ 40.00	
09/28/15	1203	Maldonado		$ 9,654.75	
09/28/15	1206	West New York		$ 10,940.10	
					$11,125.15
09/30/15	1204	Maldonado		$ 9,000.00	$ 2,125.15
10/01/15		CASH	$3,500.00		
10/01/15	1462	Aljaludi Operating Account	$5,000.00		
10/01/15	1207	N. Hudson Sewer Auth.		$1,717.22	$ 8,907.93
10/07/15	1205	Maldonado		$9,000.00	
10/07/15	1210	Maldonado		$687.93	$ -780.00
10/08/15		CASH	$8,700.00		$ 7,920.00

11/09/15		CASH	$5,000.00		$ 12,920.00
11/18/15	1228	Hudson County Register		$233.00	$ 12,687.00
12/10/15	2147	ARC Real Estate		$9,565.00	$ 22,252.00
01/28/16	1284	Lourdes Vasquez Referral fee		$7,565.00	$ 14,687.00
03/08/16	1323	Maldonado		$5,000.00	$ 9,687.00
05/05/16	1360	Brokerhoff Environmental		$5,000.00	$ 4,687.00
08/29/16	1422	Brokerhoff Environmental		$4,983.73	$ -296.73

[C¶66;Ex.21.]

As illustrated above, on October 7, 2015, the $9,000 and $687.93 trust account checks issued to Maldonado created a balance of -$780 on the Maldonado client ledger card, thereby invading other, unrelated client funds maintained in respondent's trust account. Respondent also failed to maintain, inviolate, the $20,000 environmental escrow.

Respondent's trust account records demonstrate that he knew of the shortage, as illustrated on the client ledger card. Consequently, in order to make the remaining disbursements, respondent deposited $13,700 in cash, personal funds from his business account,[4] as well as a $9,565 real estate

[4] The business account funds were applied to the Maldonado ledger card on October 1, 2015, which was prior to the shortage.

commission received from ARC Real Estate, which he had earned in an unrelated transaction.

Maldonado subsequently defaulted on the Jaloudi private loan. At Jaloudi's request, respondent attempted to collect the debt from Maldonado, by issuing a December 1, 2016 notice of default to him. Maldonado did not repay the loan. As detailed below, when Jaloudi pressed respondent, in late December 2016, on the issue of repayment, respondent purportedly arranged for the assignment of the note to a third party, for $157,500. The assignment was a fiction, however; respondent merely funneled to Jaloudi escrow funds from an unrelated real estate transaction.

The Zalel Real Estate Purchase

On November 14, 2016, about six weeks after Maldonado defaulted on the Jaloudi note, Faizeh Zalel retained respondent to represent him in the purchase of a condominium in Edgewater, New Jersey (the Edgewater property) from the Estate of Karmen Civan (the Civan estate), for $695,000. On December 2, 2016, the Civan estate's lawyer, Steven Lampf, received Zalel's $69,500 earnest money deposit. On December 8, 2016, respondent served as settlement agent for the closing, which took place at his law office. The bank records established that

respondent failed to timely pay the closing expenses listed on the HUD-1, including $3,923.12 for title insurance (paid on March 30, 2017) and $6,295 in realty transfer fees to Bergen County (paid on May 9, 2017).

According to the HUD-1, as settlement agent, respondent was required to maintain an inheritance tax escrow of $285,000 (line 506), and a New Jersey estate tax escrow of $90,000 (line 507), for a combined tax escrow of $375,000. At some point after the closing, respondent paid $222,489 in New Jersey inheritance and estate taxes, and, thus, the State of New Jersey issued a clearance certificate in behalf of the estate.

On January 22, 2019, Lampf sent an e-mail to respondent, enclosing copies of the clearance certificate, and asked respondent to send the escrowed funds to Lampf's attorney trust account. On January 23, 2019, respondent replied that he would do so.

In e-mails sent on four dates between February 7 and March 1, 2019, Lampf asked respondent to remit the escrow funds to the Civan estate. Finally, on March 12, 2019, two months after Lampf's initial request, respondent sent him a $132,511 attorney trust account check.[5]

[5] The difference between the $375,000 escrow and the $132,511 disbursed to Lampf is $242,489, consisting of $222,489 in New Jersey inheritance and estate taxes and a $20,000 payment for Zalel.

From May 19, 2017 through March 12, 2019, respondent was required to maintain $133,079.33 in trust in behalf of the Civan estate. Respondent's trust account bank records demonstrate that he failed to maintain the escrow funds, inviolate, and that, despite Lampf's repeated requests for the return of those funds, respondent failed to release the funds to the Civan estate until March 12, 2019.

Respondent failed to maintain, inviolate, the combined $375,000 tax escrow. Instead, without authority to do so, he issued a portion of the escrow funds to his cousin, Jaloudi, in connection with the Maldonado loan, as detailed below. Respondent had not made any request to use the escrow funds, and neither Lampf nor his clients had authorized respondent's use of the funds.

The Feras Jaloudi Assignment

As of December 19, 2016, respondent was required to maintain, in trust, $386,761.45 in behalf of the Civan estate. However, by that date, his trust account balance had been reduced to $130,866.18, representing an unexplained shortage of $255,895.27 for the Civan estate alone.

On December 23, 2016, fifteen days after the Edgewater property closing, respondent issued to his cousin, Jaloudi, a $157,500 trust account check. The

memo line contained the following notation: "Lorestan mortg Assignment." Jaloudi had no connection with the Edgewater transaction, and respondent maintained no funds in his trust account for or in behalf of Jaloudi.

Respondent failed to produce to the OAE the Jaloudi file. Instead, he provided documents pertaining to Jaloudi's purported December 23, 2016 assignment of a mortgage to Lorestan, LLC (Lorestan). The documents included a copy of the assignment, a title closing statement, and the trust account check, in addition to a handwritten statement that respondent did not have "any disbursement log or spreadsheet."

According to the documents, on December 23, 2016, fifteen days after the Civan estate to Zalel closing, purportedly in behalf of his clients Jaloudi and Lorestan/Hamed Rouzbayani, respondent satisfied Maldonado's loan by concocting a proposed assignment of mortgage in the amount of $157,500, which was paid by invading the Civan estate's escrow funds. By issuing the $157,500 trust account check to Jaloudi, respondent also impacted the tax escrow which he was required to maintain for the Civan estate, without authority to do so. Lampf informed the OAE that respondent neither sought nor received authorization to use the escrow funds.

In addition, when respondent issued the $157,500 trust account check to Jaloudi, his trust account's bank records showed that he held no funds for or in behalf of Jaloudi. Thus, by issuing the trust account check, respondent invaded $157,500 in other parties' trust funds.

Respondent's letters to the OAE, dated February 22, and June 4, 2019, showed that his representation of Jaloudi while simultaneously continuing to represent Lorestan/Hamed Rouzbayani on other matters constituted a conflict of interest. Specifically, respondent's October 31, 2018 client ledger balance summary showed a ledger balance in at least one pre-existing Lorestan matter, in addition to the negative balance in the Jaloudi matter. Further, in the June 4, 2019 letter, respondent admitted that, at the time of the assignment, he had completed "several closings for Lorestan LLC." There is no evidence that respondent sought or received written consent from his clients Jaloudi and Rouzbayani to waive any conflict of interest; and there is no evidence that he did so after providing full disclosure and consultation to his clients. Further, there was no evidence that respondent ever provided Jaloudi and Lorestan/Rouzbayani an explanation of the common representation and the advantages and risks involved, as required by RPC 1.7.

Lorestan/Rouzbayani did not execute the assignment documents, and respondent produced no evidence that Lorestan/Rouzbayani was even aware of the purported assignment of mortgage. Moreover, bank records reveal no evidence that respondent received any funds from Lorestan/Rouzbayani for any such transaction.

The OAE was unable to interview Lorestan's principal owner, Hamed Rouzbayani and, thus, could not confirm whether he had been aware of any such proposed assignment of the mortgage. Nevertheless, respondent failed to produce any evidence of any communications to or from Rouzbayani in connection with the transaction.

Respondent told the OAE that Lorestan did not complete the assignment transaction. Moreover, he claimed that he was simply mistaken in his belief that Lorestan had provided him with funding for the assignment. Respondent told the OAE that he had been unaware of the negative client balance until the March 2018 random audit, and that, thereafter, he asked Jaloudi to return the funds.

On September 25, 2019, the OAE interviewed Jaloudi, who confirmed that he did not buy the Edgewater property. Rather, he explained that the $157,500 trust account check represented the return of his $150,000 loan to Maldonado,

plus interest. Jaloudi denied that respondent had asked him to return the funds. In short, there is no evidence that the purported assignment ever took place.

Further, despite the December 2016 "assignment" of Maldonado's loan, on November 27, 2017, respondent sent the following letter to Maldonado:

> [p]lease be advised that the payoff balance on the above referenced mortgage is $156,000.00. This figure is good thru December 15, 2017. All payments have been made by Mr. Maldonado and no payment was required as of December 2016 to the present. Upon receipt of certified or wire funds a discharge of mortgage will be provided.
>
> [C¶95;Ex.24.]

Respondent's financial records and his November 2017 collection letter to Maldonado reveal that respondent was aware of the $157,500 trust account shortage, which he knowingly created in December 2016. Hence, respondent's statement to the OAE that he had not learned of the shortage until the March 2018 random audit was false.

The negative $157,500 Jaloudi balance was not the only client deficit. As of December 31, 2016, which was after respondent had paid Jaloudi $157,500, his Client Ledger Balance Summary reflected a total client balance of -$383,404.56. Respondent's records do not reconcile. Nevertheless, bank records for respondent's trust account and his December 31, 2016 three-way

reconciliation reveal an ending bank balance of $719,307.36 and an ending client ledger balance of $708,411.62. Although the negative client balances did not create an overdraft in respondent's trust account, they invaded client funds that he was required to maintain, inviolate, during that period. Further, the shortages continued into the next year.

On May 19, 2017, respondent issued to Zalel a $20,000 trust account check, in connection with the Edgewater property.[6] On May 22, 2017, when the check posted to respondent's trust account, the balanced decreased to $33,490.19 and caused a $99,589.14 shortage ($133,079.33 - $33,490.19) in the Civan estate to Zalel matter alone.

Respondent's client ledger card for the Civan estate to Zalel transaction revealed that, as of May 25, 2017, he was required to maintain $133,079.33 in his trust account for that matter. However, on May 25, 2017, the trust account balance had been reduced to $7,170.19, increasing the shortage to $125,909.14 ($133,079.33 - $7,170.19) for the Civan estate to Zalel matter alone. Respondent

[6] The $20,000 paid to Zalel represented a settlement for a claim arising from Zalel's post-closing discovery of undisclosed damage caused by water and mold.

had depleted the estate's funds by disbursing the $157,500 to Jaloudi in 2016, without authority.

Trust account bank records and respondent's reconciliations for the period ending January 31, 2019 reveal a reconciled balance of $22,033.65, representing a shortage of $111,045.68 for the Civan estate. Respondent did not receive or collect any funds from Maldonado to either repay the loan to Jaloudi or to replenish the $157,500 shortage in the trust account. Instead, on March 12, 2019, respondent replenished the $157,500 shortage with a loan, in that amount, from his brother, Amin A. Jaludi (Amin), but only after Lampf's repeated requests for the return of the escrow funds, as described above. According to Amin, respondent asked him for a loan due to a "mix-up" with his attorney trust account in connection with a mortgage assignment involving their cousin, Jaloudi. Amin told the OAE that, although he did not fully understand respondent's explanation, he did not care about the details, but requested and received respondent's assurance that he would repay the loan.

Respondent's denial that he was aware of client shortages in his trust account, until the March 23, 2018 random audit, was demonstrated to be false. Respondent knew, on December 23, 2016, that he had issued the $157,500 trust account check to Jaloudi, thereby causing a shortage of $157,500. In addition,

respondent's efforts to collect the debt from Maldonado showed that he was aware of the shortage well before the random audit.

Respondent also knew that he was required to maintain the escrow funds for the Civan estate, yet he failed to do so. Rather, he used the tax escrow without authority to do so and failed to replenish the funds until March 12, 2019, after receiving repeated requests from Lampf.

Legal Fees

Respondent told the OAE that, on March 30, 2015, he incorrectly had deposited in his trust account earned legal fees of $13,085, which he then identified on the Client Ledger Balance Summary of October 31, 2018 as "wrong account." He produced client records that supported only $12,860 in fees, however. The legal fees that respondent retained in his trust account did not cover the shortage of client funds, including -$157,500 for Jaloudi, and did not counter his failure to maintain, inviolate, the $375,000 in escrow funds in behalf of the Civan estate.

Bank records and respondent's three-way reconciliation for the period ending October 31, 2019 revealed a balance of $23,493.37 for twenty-five separate client matters, including $13,085 for legal fees listed under "wrong

account," as detailed above, and -$5,895.72 for Efat Gerges and -$6,020 for Hinostroza. After deducting $12,860 in fees, respondent was required to maintain a balance of $22,324.09 for the twenty-four client matters listed on the Client Ledger Balance Summary for the period ending October 31, 2019.

Based on the above facts, the complaint charged respondent with knowing misappropriation of client or escrow funds, in violation of RPC 1.15(a) and the principles set forth in Wilson and Hollendonner; RPC 1.7; RPC 1.15(a) and (b); RPC 8.4(c); and RPC 1.15(d) and R. 1:21-6.

Non-Cooperation with Disciplinary Investigation

On September 20, 2018, the OAE reminded respondent of the recordkeeping deficiencies uncovered at the March 23, 2018 random audit, as described above. The OAE set a deadline of October 8, 2018 for respondent to submit various trust and business account records for the period beginning January 1, 2015. Although respondent received an extension to October 15, 2018, he failed to produce the records by that date. Instead, between October 17 and 30, 2018, respondent sporadically hand-delivered incomplete trust and business account records to the OAE.

On January 10, 2019, the OAE directed respondent to produce, by January

24, 2019, his trust and business account records for the period October, November, and December 2018. The OAE also scheduled a demand audit for February 4, 2019, covering the period from January 1, 2015 forward.

On January 22, 2019, respondent produced his executed "Attorney Bank Account Disclosure Form," along with trust account records for October, November, and December 2018. On February 4, 2019, the OAE conducted the demand audit.

By letter dated February 7, 2019, the OAE directed respondent to produce a substantial amount of information, including any retainer agreement(s), escrow agreement(s), correspondence, spreadsheets, and client ledger cards for the Zalel, Jaloudi, and Hinostroza matters; an explanation for each positive client balance and each negative client balance listed on his "Client Ledger Balance Summary As of October 31, 2018;" and proof of the efforts that he had undertaken to disburse the positive balances to the parties entitled to the monies; the efforts he had taken to collect the negative balances; and that he had deposited the funds in his attorney trust account.

On February 22, 2019, respondent produced records for the Zalel matter, but failed to produce his files for the Jaloudi and Hinostroza matters, or any other information that the OAE had requested.

During the January 3, 2020 demand audit, the OAE directed respondent to produce, by January 13, 2020, a copy of his malpractice insurance policy and a "Term Sheet" related to the $150,000 Jaloudi to Maldonado note, among other records. Respondent admitted to the OAE that he did not maintain malpractice insurance, as R. 1:21-1A(a)(3) required.

On March 27, 2019, the OAE filed a motion for respondent's immediate temporary suspension, based on his repeated failure to account for all client funds, including trust monies disbursed to Jaloudi, as well as the shortage of escrow funds held for the Civan estate. On May 3, 2019, the Court ordered respondent to (1) practice law only under the supervision of a practicing attorney approved by the OAE; (2) obtain a cosignatory approved by the OAE for his attorney trust account and refrain from making disbursements from the trust account without the signature of the cosignatory; (3) receive psychological counseling; and (4) cooperate fully with the OAE investigation. The Order further provided that the Court may temporarily suspend respondent if he failed to comply with its terms. On September 3, 2019, the Court temporarily suspended respondent for failure to comply with its May 3, 2019 Order, following the OAE's multiple demand audits and requests for documents, throughout 2019 and early 2020.

Based on the above facts, the complaint charged respondent with having violated RPC 5.5(a)(1) and RPC 8.1(b).

We find that the facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

In respect of the non-knowing-misappropriation charges, although the complaint did not identify which subparagraph of RPC 1.7 applied to the charged conflict of interest, it is clear that, in the case of the loan from Jaloudi to Maldonado, subsection (a) applied. Under RPC 1.7(a), an attorney is prohibited from undertaking a concurrent representation when the representation of one client will be directly adverse to another client.

Before respondent procured the loan from Jaloudi to Maldonado, he had been working with Maldonado in seeking a loan. Yet, respondent represented Jaloudi in the loan transaction. Clearly, as lender and borrower, Jaloudi's and Maldonado's interests were adverse. Respondent, thus, was prohibited from simultaneously representing them, in the absence of informed, written consent, after full disclosure. RPC 1.7(a) and (b). Because respondent failed to obtain the

parties' informed, written consent, he violated RPC 1.7(a) by representing both parties in the loan transaction.

The same cannot be said of the "assignment." If the transaction were legitimate, then respondent certainly would have violated RPC 1.7(a), as he would have represented both the assignor and the assignee in the transaction. Because that transaction never occurred, respondent did not engage in a conflict of interest in this regard.

RPC 1.15(a) requires a lawyer to hold client and escrow funds separate from the lawyer's own property. Respondent violated RPC 1.15(a) by depositing $12,860 in earned legal fees in the trust account rather than the business account.

Respondent violated RPC 1.5(b) in the Civan estate to Zalel real estate transaction. Although the closing took place in December 2016, respondent failed to pay the $3,923.12 for title insurance and the $6,295 in realty transfer fees to Bergen County until March 2017 and May 2017, respectively.

RPC 1.15(d) requires a lawyer to comply with the recordkeeping provisions of R. 1:21-6. The March 2018 random audit uncovered a multitude of violations of R. 1:21-6, some of which respondent never corrected. Accordingly, the allegations of the complaint sustain the RPC 1.15(d) charge.

Respondent admitted to the OAE that he did not maintain professional liability insurance, despite purporting to operate his law firm as a professional corporation. He, thus, violated RPC 5.5(a)(1). See, e.g., In re Lindner, 239 N.J. 528 (2019) (practicing law as an LLC without maintaining professional liability insurance violates RPC 5.5(a)(1)), and In the Matter of F. Gerald Fitzpatrick, DRB 99-046 (April 21, 1999) (practicing law as a professional corporation without maintaining professional liability insurance violates RPC 5.5(a)).

Respondent also failed to cooperate with the OAE, in violation of RPC 8.1(b). During a two-year period, the OAE conducted audit after audit in an attempt to completely investigate respondent's attorney books and records. Respondent failed to comply fully with the investigation, ultimately leading to his temporary suspension. Moreover, he failed to file an answer to the complaint, a second violation of RPC 8.1(b).

Finally, respondent violated RPC 8.4(c) by preparing and certifying the HUD-1 in the Jaloudi to Maldonado loan transaction. The document was replete with falsehoods (e.g., listing disbursements to financial institutions) and errors (e.g., the monies due either to or from Maldonado). In addition, the "assignment" was a fiction, created for the purpose of supporting Lorestan's payment of $157,500 to satisfy the Maldonado loan.

In respect of the knowing misappropriation charges, 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. 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.

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.

Here, respondent's payment of $157,500 to Jaloudi from the Civan estate's escrow monies, without authorization to do so, clearly violated RPC 1.15(a), the principles of Wilson and Hollendonner, and RPC 8.4(c). The assignment took place on December 23, 2016. At the time, Jaloudi had been persistent in his requests that respondent recover the overdue payment from Maldonado. Respondent was unable to procure Maldonado's cooperation in satisfying his obligation. He, thus, invented the notion of an assignment of the Maldonado loan

from Jaloudi to another client, Lorestan. The record, however, contains no evidence that Lorestan knew of or participated in the assignment, or that he tendered $157,500 for disbursement to Jaloudi. Respondent, thus, was required to fund the $157,500 "disbursement" from Lorestan to Jaloudi, and improperly used the Civan estate's escrow monies.

As of December 19, 2016, respondent's trust account balance was $130,866.18, when he should have been holding $386,761.45 in behalf of the Civan estate. Thus, at that time, the trust account and the estate had an unexplained shortage of $255,895.27.

Four days later, on December 23, 2016, respondent issued Jaloudi the $157,500 check in payment of the Maldonado loan assignment. Although, by that point, the trust account had more than enough funds to cover the check, the record contains no evidence that respondent replenished the shortage in the Civan estate's funds. Moreover, respondent functionally admitted that he had invaded the Civan estate's escrow monies to fund the check to Jaloudi, when he required a $157,500 loan from his brother, Amin, in order to finally return the $132,511 in escrow monies to Lampf. He did so without permission from the Civan estate and, thus, he knowingly misappropriated the estate's escrow funds.

Certain allegations in the complaint suggest knowing misappropriation in other contexts. For example, in the Jaloudi to Maldonado loan transaction, respondent failed to maintain inviolate the $20,000 environmental escrow and that he created a $780 shortage in respect of the refinance. The complaint also referred to deficits in other client matters. In respect of all these allegations, the complaint does not explain the genesis of the shortages, or whether, in creating them, respondent had the permission of those with an interest in the monies to use them. We, thus, are left with only the obvious instance of knowing misappropriation in respondent's use of the Civan estate tax escrow to fund the $157,500 "assignment" of the Maldonado loan from Jaloudi to Lorestan. We conclude that respondent thereby knowingly misappropriated escrow funds that he was duty-bound to hold, inviolate, in his trust account in behalf of the Civan estate.

In sum, we find that respondent violated RPC 1.7(a), RPC 1.15(a) and (d), RPC 1.5(b), RPC 5.5(a), and RPC 8.1(b). He also violated RPC 1.15(a), the principles of Wilson and Hollendonner, and RPC 8.4(c), by knowingly misappropriating escrow funds. The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

In light of respondent's knowing misappropriation of 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 respondent's additional ethics violations.

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 Zak A. Aljaludi
Docket No. DRB 20-228

Decided: April 29, 2021

Disposition: Disbar

Members	Disbar	Recused	Did Not Participate
Clark	X		
Gallipoli	X		
Boyer	X		
Hoberman	X		
Joseph	X		
Petrou	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	9	0	0

Johanna Barba Jones
Chief Counsel