Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-342
District Docket No. XIV-2018-0296E

In the Matter of	
Angela Jupin	
An Attorney at Law	

Decision

Argued: April 15, 2021

Decided: May 26, 2021

Ryan J. Moriarty appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before us on a recommendation for disbarment filed by Special Ethics Master Bernard A. Kuttner, Esq. The formal ethics complaint charged respondent with knowing misappropriation of client funds, in violation of RPC 1.15(a) (failure to safeguard client funds), RPC 8.4(c) (conduct involving dishonesty, deceit, fraud or misrepresentation), and the principles set

forth in In re Wilson, 81 N.J. 451 (1979) (eight instances); and with having further violated RPC 1.7(a) (conflict of interest); RPC 1.15(b) (failure to promptly deliver to the client or a third person any funds or other property that the client or the third person is entitled to receive) (two instances); RPC 1.15(d) (failure to comply with the recordkeeping provisions of R. 1:21-6); RPC 3.2 (failure to expedite litigation); RPC 3.3(a)(1) (false statement of material fact or law to a tribunal); RPC 5.4(a) (improper fee sharing); RPC 8.4(b) (commission of criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects) (five instances, in connection with the knowing misappropriation charges); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

For the reasons set forth below, we recommend to the Court that respondent be disbarred.

Respondent was admitted to the New Jersey bar in 1997. In September 2020, subsequent to the filing of the complaint this matter, she changed her status to retired. At the relevant times, she maintained an office for the practice of law in Phillipsburg, New Jersey.

On April 27, 2021, we determined to reprimand respondent for her violations of RPC 1.3 (lack of diligence) and RPC 1.4(b) (failure to

communicate with the client). In the Matter of Angela Jupin, DRB 20-178 (April 27, 2021). That matter is pending with the Court.

Respondent was the sole witness at the one-day hearing in this case, which occurred following extensive factual stipulations between the parties. Overall, respondent admitted the material facts but denied the charged violations, asserting that her misappropriation of client funds was not knowing or intentional.

Respondent maintained her attorney bank accounts at PNC Bank. From February 25, 2015 to September 9, 2016, she maintained an attorney trust account ending in 4245 (ATA1). From January 9 to September 8, 2017, she maintained an attorney trust account ending in 5302 (ATA2). On July 2, 2012, respondent opened an attorney business account (ABA), which she continued to maintain as of March 2, 2020.

On May 9, 2018, the Superior Court Clerk's Office referred respondent to the Office of Attorney Ethics (the OAE) because, as of April 27, 2018, her Judiciary Account Charge System (JACS) account had been overdrawn by $5,855 for twenty-five days.[1] By May 31, 2018, respondent's JACS account was

[1] The purpose of a JACS account is to "facilitate the payment of court fees." www.njcourts.gov/superior/jacseap.html. Attorneys can use JACS to charge filing and other fees. Ibid.

overdrawn by $6,755. On an unidentified date, respondent replenished the account.

Count One: Respondent's Relationship with Mid-Atlantic Appraisal

In count one of the ethics complaint, the OAE charged respondent with engaging in both a conflict of interest and improper fee sharing, in violation of RPC 1.7(a) and RPC 5.4(a), respectively. Mid-Atlantic Appraisal (Mid-Atlantic), a real estate appraisal company, located individuals seeking to appeal their real estate tax assessments and property tax bills and then referred them to specific attorneys to handle the appeals. The individuals did not have discretion to select from Mid-Atlantic's attorneys or to seek independent counsel. Mid-Atlantic's clients signed an agreement with Mid-Atlantic, detailing the payment of the fee to Mid-Atlantic, as well as the fee paid to the referred attorney, which Mid-Atlantic negotiated.

In early 2016, Mid-Atlantic began referring tax appeal matters to respondent. Specifically, Mid-Atlantic sent respondent a list of its clients, contact information, and property details. On receipt of the client list, respondent sent each of the clients a retainer agreement covering her services for filing the property tax appeal.

Respondent did not receive and, thus, did not review, the agreements between Mid-Atlantic and its clients. Nevertheless, she knew that Mid-Atlantic

would receive between thirty and forty percent of any property tax savings or refund if a tax appeal were successful. For her part, respondent received a fixed percentage (ten percent or less) of any property tax savings for the first two years or of any refund. Mid-Atlantic determined the percentage respondent would receive as a fee.

Mid-Atlantic provided respondent with checks to cover filing fees for the property tax appeals in each relevant municipality. After an appeal was filed, Mid-Atlantic performed the appraisals, answered interrogatories, and received copies of the proposed settlements.

Sometimes, on completion of a successful property tax appeal, Mid-Atlantic provided its client with a statement detailing the distribution of the property tax refund to Mid-Atlantic and respondent, based on the agreed-upon percentages. Respondent, in turn, issued the client a check in an amount representing the refund less respondent's fee.

In 2017 and 2018, respondent received approximately 500 referrals from Mid-Atlantic. She filed appeals in all but ten matters.

Count Two: the Schwarting, Ouzoinian, and Mahyars Client Matters

In count two of the complaint, the OAE charged respondent with knowing misappropriation of client funds in connection with her representation of six clients in three property tax appeal matters.

The first allegation of knowing misappropriation charged in count two involved clients Carsten and Meaghan Schwarting. On March 28, 2016, on referral from Mid-Atlantic, respondent sent a retainer agreement to the Schwartings for a property tax appeal related to their Millburn Township property. Respondent's contingent fee was 6.6% of "the first two (2) years' tax savings for each assessment reduction."[2]

On April 1, 2016, respondent filed the Schwartings' appeal with the Tax Court. The Schwartings prevailed and, on December 20, 2016, Millburn Township issued a $5,385 refund check to respondent. On January 27, 2017, respondent notified the Schwartings of the outcome and sent them a $5,029.59 check, representing the difference between the refund and her $355.41 fee.

The second allegation of knowing misappropriation charged in count two involved clients Souren and Carol Ouzoinian. On March 28, 2016, on referral from Mid-Atlantic, respondent sent a retainer agreement to the Ouzoinians for a property tax appeal related to their Millburn Township property. Respondent's contingent fee was ten percent.

[2] In each client matter, respondent's fee was a percentage of "the first two (2) years' tax savings for each assessment reduction." Presumably, too, in all matters, at least one client signed the retainer fee agreement, although the stipulation was silent in respect of tax appeal clients Melvyn and Lori Ravitz; William Melchione; and Al D'Alessandro. Because the parties stipulated to these facts in most matters, as a matter of efficiency, they are not repeated in the body of this decision.

On April 1, 2016, respondent filed the Ouzoinians' appeal with the Tax Court. The Ouzoinians prevailed and, on December 20, 2016, Millburn Township issued a $6,080.74 refund check to respondent. On January 30, 2017, respondent notified the Ouzoinians of the outcome and sent them a $5,472.67 check, representing the difference between the refund and her $608.07 fee.

The third allegation of knowing misappropriation charged in count two involved clients Sharyar and Mehrnoush Mahyar. On March 28, 2016, on referral from Mid-Atlantic, respondent sent a retainer agreement to the Mahyars for a property tax appeal related to their Mendham Township property. Respondent's contingent fee was nine percent.

On April 1, 2016, respondent filed the Mahyars' appeal with the Tax Court. The Mahyars prevailed and, on January 9, 2017, Mendham Township issued a $3,733.52 refund check to respondent. On February 6, 2017, respondent notified the Mahyars of the outcome and sent them a $3,397.52 check, representing the difference between the refund and her $336 fee.

On Saturday, January 7, 2017, respondent opened ATA2 using the Schwarting and Ouzoinian refund checks, which totaled $11,465.74. On January 18, she transferred $11,450 of the $11,465.74 to her ABA, and deposited an

additional $492.80 in her ABA.[3] Prior to these deposits, respondent's ABA balance was -$525.70.

Also, on January 18, 2017, respondent's ABA was debited for two $36 bank fees, representing an overdraft item fee and a returned item fee, and PNC paid ABA check number 365, in the amount of $1,125 on a tax matter unrelated to the Schwarting, Mahyar, and Ouzoinian matters. The parties stipulated that the payment of the $1,125 check invaded the $11,450 in Schwarting/Ouzoinian funds that respondent was required to safeguard for those clients.

On January 19, 2017, respondent further invaded her clients' funds when she issued and negotiated ABA check number 230, payable to cash, in the amount of $690, and made a $780 cash withdrawal from the account.

The stipulation does not contain copies of the checks issued by respondent to the Schwartings and Ouzoinians. Nevertheless, it appears that, on January 27, 2017, she issued to the Schwartings ABA check number 368 in the amount of $5,029.59. On January 30, 2017, she issued to the Ouzoinians ABA check number 364 in the amount of $5,472.67.

On February 7, 2017, both checks cleared respondent's ABA. Thus, from January 18 to February 7, 2017, respondent was required to hold $10,502.26,

[3] On January 9, 2017, respondent made a balance inquiry regarding the ABA, which, depending on the time of day, was either $148.11 or -$246.71.

inviolate, representing the Schwartings' $5,029.59 and the Ouzoinians' $5,472.67. Yet, her ABA balance was below that amount between January 19 and January 31, 2017, when she reduced it to $9,150.89, representing a shortage of $1,351.37.

On February 3, 2017, respondent deposited in her ATA2 the $3,733.52 Mahyar refund check. On February 6, 2017, she issued to the Mahyars ABA check number 369 in the amount of $3,397.52. The next day, the Schwartings' and Ouzoinians' checks cleared the account, and respondent transferred $3,735 from ATA2 to her ABA. The Mahyars' check was negotiated on February 21, 2017.

The parties stipulated that, as of February 6, 2017 (which was prior to the negotiation of any check issued to the Schwartings, Ouzoinians, and Mahyars), respondent should have been holding, inviolate, a total of $13,899.78 for those clients in a trust account. Instead, respondent deposited the Schwartings' and Ouzoinians' checks into her ABA. Although she had deposited the Mahyars' funds in her ATA2, where they remained on February 6, she issued their refund check against the ABA, on that date, even though no funds for them were on deposit in that account until the following day.

In addition to the above checks and cash withdrawals from the ABA, the stipulation identified eleven debit card purchases, including at ShopRite and

Macy's, made after respondent "transfer[red] the client funds from her ATA[2] to her ABA on January 18, 2017[4] through disbursement on February 6, 2017." Specifically, respondent's debited purchases were made between January 26 and February 6, 2017 and totaled $1,056.91.

On February 6, 2017, after the purchases had been made, respondent's ABA balance was $10,357.40, representing a $3,542.38 shortage in the $13,899.78 that respondent should have been holding for the Schwartings ($5,029.59), Ouzoinians ($5,472.67), and Mahyars ($3,397.52). From January 17, 2017 until February 7, 2017, the date that the ABA checks to the Schwartings and Ouzoinians cleared the account, respondent was holding client funds only for the Schwartings, Ouzoinians, and Mahyars.

Both in her January 30, 2019 demand interview and the March 2, 2020 certification, respondent agreed that these purchases, as well as cash withdrawals and "check disbursements," impacted her clients' trust funds. On both occasions, she admitted that the clients had not authorized the use of her funds for personal purposes. Respondent agreed that, were it not for the client

[4] The stipulation mistakenly identified the transfer date as January 17, 2017. Indeed, a review of the January 2017 ATA2 bank statement shows that no funds were transferred from the account on January 17, 2017. Rather, as stated previously, on January 18, 2017, she transferred from ATA2 to her ABA $11,450 of the $11,465.74 combined refunds for the Schwartings and Ouzoinians.

funds in the account, there would not have been sufficient funds to cover her personal purchases.

Count Three: Client Anjuman Begum

In count three of the complaint, the OAE charged respondent with knowing misappropriation of client funds arising from her representation of Anjuman Begum in a property tax appeal matter. The OAE also charged respondent with having violated RPC 1.15(b) and RPC 8.4(b) (citing N.J.S.A. 2C:21-15, misapplication of entrusted property) in the same matter.

On March 28, 2016, on referral from Mid-Atlantic, respondent sent a retainer agreement to Anjuman Begum for a property tax appeal related to her Mahwah Township property. Respondent charged a ten percent contingent fee.

On March 31, 2016, respondent filed Begum's appeal with the Tax Court. On June 8, 2017, Mahwah Township issued a $2,531.40 refund check to respondent, who deposited it in her ABA on June 29, 2017. On July 7, 2017, Mid-Atlantic informed Begum that the appeal was successful and that a $2,531.40 refund check had been issued to respondent, of which Begum was entitled to $1,265.70, and respondent was due $253.14.

Between June 29 and July 9, 2017, PNC assessed several bank fees against respondent's ABA, and respondent made two debit card purchases and negotiated a check to cash. On July 5, 2017, respondent electronically

transferred $1,696.70 from her ABA to Bright Horizons, her children's daycare provider. She also issued a $520 check payable to cash. During this time, respondent testified, she did not have any personal funds in her ABA.

On December 12, 2017, nearly five months after her June 29, 2017 deposit of the $2,531.40 Begum refund check in her ABA, respondent sent a letter to Begum, detailing the outcome of the appeal. On December 30, 2017, respondent sent Begum ABA check number 417, in the amount of $1,265.70, which Begum negotiated on January 10, 2018.[5]

Respondent attributed the delay between her July 2017 deposit and her December 2017 disbursement to the sale of Begum's house while the tax appeal was pending. During that time, respondent explained that Begum and the buyers were negotiating the division of the tax refund proceeds.

The parties stipulated that, between June 29, 2017, when respondent deposited the $2,531.40 refund check in her ABA, and January 2, 2018, the date mistakenly represented to be when check number 417 was negotiated, respondent was required to maintain in her ABA $1,265.70, inviolate, for the benefit of Begum. However, during that time, respondent permitted the ABA balance to fall below that amount on more than fifty occasions, with negative

[5] The stipulation erroneously identified the date as January 2, 2018.

account balances reaching a low of -$2,352.84 (on August 2, 2017), which amounted to -$3,618.54.

The parties stipulated that, after the June 29, 2017 deposit of the $2,531.40 Begum refund check, respondent issued five ABA checks, payable to cash, totaling $2,860. By way of letter dated April 12, 2019, respondent explained that the $2,860 in checks were payments to her nanny. During her demand interview and her testimony, respondent admitted that she did not have Begum's permission to utilize her client funds for personal use.

Count Four: Client Lucas Kropywnyckyj

In count four of the complaint, the OAE charged respondent with knowing misappropriation of client funds arising from her representation of Lucas Kropywnyckyj, the defendant in a consumer fraud claim. The OAE also charged respondent with having violated RPC 1.15(b); RPC 3.2; RPC 3.3(a)(1); RPC 8.4(b) (N.J.S.A. 2C:21-15); RPC 8.4(c) (separate instance unrelated to the knowing misappropriation claim); and RPC 8.4(d) in the same matter.

On February 24, 2017, Lucas Kropywnyckyj retained respondent to defend him in a consumer fraud claim arising from the advertising of the sale of a Bergen County gas station business and the real property on which it was located. On the July 24, 2017 trial date, the parties reached a settlement, the

terms of which were placed on the record. The settlement required Kropywnyckyj to pay the plaintiff $2,500.

On August 7, 2017, respondent deposited in her ABA Kropywnyckyj's $2,500 in settlement funds. Prior to that deposit, the balance was -$1,538.84. Also on that date, respondent made a $400 ATM withdrawal, accompanied by a $3 fee, and PNC assessed a $14 overdraft fee. This disbursement and the fees were covered by Kropywnyckyj's settlement proceeds.

On August 17, 2017, respondent issued ABA check number 411, payable to cash, in the amount of $660. On August 25, 2017, she issued ABA check number 412, payable to cash, in the amount of $440. The checks were cashed on August 18 and 28, respectively. Although respondent made "subsequent deposits" to her ABA, the balance did not reach $2,500 until October 20, 2017.

Meanwhile, between July 26 and August 14, 2017, closing papers in respect of the settlement were being circulated among the parties to the litigation. On September 6, 2017, opposing counsel Leonard E. Seaman, Esq. sent an e-mail to respondent and other parties requesting that the papers be executed. On that date, respondent's ABA balance was -$687.16. Respondent did not reply to Seaman's e-mail.

On September 11 and 13, 2017, Seaman informed respondent that, if the settlement was not finalized by the end of the week, he would file a motion to

enforce it. On those dates, respondent's ABA balance was -$522.84 and -$536.84, respectively. Respondent did not reply to either of Seaman's communications.

On September 15, 2017, Seaman extended his deadline for filing the motion to September 22, 2017. On that date, respondent's ABA balance was -$586.84.

On September 22, 2017, respondent sent an e-mail to Seaman, stating that she was on vacation; that her assistant had sent the release; and that she would send the check to him when she returned to the office on Tuesday. On that date, respondent's ABA balance was -$635.84.

Seaman agreed to withhold filing the enforcement motion until September 29, 2017. He received a stipulation of dismissal from respondent on September 28, albeit without the signed settlement agreement or a settlement check. On this date, respondent's ABA balance remained at -$635.84.

On October 3, 2017, Seaman filed a motion to enforce the settlement and for counsel fees. The balance in respondent's ABA was -$647.84. Finally, on October 18, 2017, respondent issued a $2,500 settlement check, as the settlement agreement had now been signed by all parties. The stipulation did not identify the account against which the check was issued. Although her ABA balance was now positive, at $2,235.97, that amount was still less than $2,500.

On October 19, 2017, when the balance in her ABA account was $2,030.65, respondent filed written opposition to Seaman's motion. Respondent claimed that Seaman's motion was moot because he had received both the executed agreement and the settlement check the day before.

Respondent's supporting certification, offered in support of her opposition to the motion to enforce, contained the standard language that "the foregoing statements . . . are true . . . ." Yet, she claimed in that document that, as of the first week of August 2017, the $2,500 was in her ATA2, despite the fact that the funds had been deposited in her ABA. Further, respondent did not disclose that, as of October 19, 2017, the $2,500 was not intact in any account. According to respondent, she was trying to convey the message that her client had paid the $2,500, which was in her possession.

On November 3, 2017, the court granted Seaman's motion to enforce but denied his request for attorneys' fees. As detailed above, between August 7 and October 18, 2017, respondent's ABA balance was less than $2,500. On October 20, 2017, she deposited $470 in the account, which raised the balance to $2,500.65. She testified that, prior to the deposit, she had checked the account and realized that it was overdrawn. She insisted, however, that "that's the only one that I checked." Respondent's October 2017 bank statement reflected that a $2,500 check was paid on October 23, 2020, leaving a $0.65 balance in the ABA.

During her September 5, 2018 demand interview, respondent stated the following in respect of the $2,500 settlement check:

> [M]y worst fear would be to issue a check to a client that bounces. So I would never write a check to a client and not check to make sure it was in there, put money in there, do whatever I needed to make sure that a client check clears.
>
> [S¶135;Ex.3,p.130.][6]

According to respondent, none of her clients complained "in any way," and they all received their funds.

During respondent's testimony, she agreed that, in her October 19, 2017 motion response, she had claimed that the settlement had been delayed due to the time it took to finalize the settlement agreement. Respondent conceded, however, that the agreement signed in September 2017 was no different from the version that she had received in August, a month earlier. Still, she had been awaiting final signatures. Respondent also conceded that, when Seaman threatened to file the motion to enforce, she did not advise him that she was withholding the settlement because she lacked final signatures. Rather, she explained that, due to health issues, she "wasn't even getting out of bed around that time."

[6] "S" refers to the stipulation of facts, dated March 2, 2020.

Count Five: Clients Ravitz, Melchione, and D'Alessandro

In count five of the complaint, the OAE charged respondent with knowing misappropriation of client funds arising from her representation of Melvyn and Lori Ravitz, William Melchione, and Al D'Alessandro in their respective property tax appeal matters. The OAE also charged respondent with having violated RPC 8.4(b) (N.J.S.A. 2C:21-15) in the same matters.

The first allegation of knowing misappropriation charged in count five involved clients Melvyn and Lori Ravitz. On March 15, 2017, on referral from Mid-Atlantic, respondent sent a retainer agreement to the Ravitzes for a property tax appeal related to their Brick Township property. The contingent fee was nine percent.

On March 23, 2017, respondent filed the Ravitzes' appeal with the Tax Court. The Ravitzes prevailed and, on December 20, 2017, Brick Township issued a $2,643.60 refund check payable to "Angela Jupin, Esq. Att. Trust Account." On February 6, 2018, respondent notified the Ravitzes of the outcome of their appeal. For her work on the matter, respondent's fee was $237.92.

The second allegation of knowing misappropriation charged in count five involved client William Melchione. On March 21, 2017, on referral from Mid-Atlantic, respondent sent a retainer agreement to Melchione for a property tax

appeal related to his Brick Township property. The contingent fee was ten percent.

On March 25, 2017, respondent filed Melchione's appeal with the Tax Court. Melchione prevailed and, on December 20, 2017, Brick Township issued a $3,031.33 refund check payable to "Angela Jupin, Esq. Att. Trust Account." On February 6, 2018, respondent notified Melchione of the outcome of his appeal. For her work on the matter, respondent's fee was $303.13.

The third allegation of knowing misappropriation charged in count two involved client Al D'Alessandro. In March 2017, on referral from Mid-Atlantic, respondent sent a retainer agreement to D'Alessandro for a property tax appeal related to his Brick Township property. The contingent fee was ten percent.

On March 29, 2017, respondent filed D'Alessandro's appeal with the Tax Court. D'Alessandro prevailed and, on December 20, 2017, Brick Township issued a $2,879.32 refund check payable to "Angela Jupin, Esq. Att. Trust Account." On February 6, 2018, respondent notified D'Alessandro of the outcome of his appeal. For her work on the matter, respondent's fee was $287.93.

Respondent handled the above clients' refunds as follows. On January 11, 2018, respondent's ABA balance was -$801.19. The following day, respondent deposited in her ABA the Ravitz, Melchione, and D'Alessandro tax refund

checks, totaling $8,554.25. At this point, she should have been holding $7,725.26, inviolate, for the three matters, which represented the difference between the total refunds ($8,554.25) and her aggregate fees for the matters ($828.98). Instead, on January 12, 2018, her ABA balance was $7,133.06, representing a shortage of -$592.20 in client funds. Thus, according to the stipulation, when respondent deposited the refund checks, on January 12, 2018, at a time when the ABA's negative balance exceeded her legal fees in the three matters, she immediately invaded the client funds of the Ravitzes, Melchione, and D'Alessandro.

At no time between January 12, 2018, when the refund checks were deposited, and February 6, 2018, when respondent disbursed the monies to her clients, did her ABA contain the required $7,725.26 in client trust funds. In addition, after she deposited the refund checks, respondent made twenty-two purchases, eight of which were clearly personal expenses, before making a deposit of her own funds. Thus, respondent testified, the twenty-two purchases were made with funds belonging to the Ravitzes, Melchione, and D'Alessandro, none of whom had given her permission to do so.

According to the stipulation, during respondent's September 5, 2018 demand interview, she stated that she "did not actively plan to take client funds." She admitted that, absent the $8,554.25 in client funds, however, the ABA would

have had a negative balance. She, thus, stipulated that she had failed to safeguard client funds.

Finally, respondent admitted that she had made purchases for personal use with funds belonging to the Ravitzes, Melchione, and D'Alessandro without their permission.

Count Six: Recordkeeping

In count six of the complaint, the OAE charged respondent with recordkeeping violations, in violation of RPC 1.15(d). Respondent admitted that, when she opened her law firm, she was aware of the recordkeeping Rules and, further, that she was solely responsible for her law firm's recordkeeping responsibilities.

During the September 5, 2018 demand audit, the OAE uncovered the following recordkeeping deficiencies: (1) no ATA maintained from September 2016 to January 2017 and from September 2017 to November 2017 (R. 1:21-6(a)(1)); (2) improper designation of the ATA on bank statements, checks, and deposit slips (R. 1:21-6(a)(2)); (3) no trust or business receipts and disbursements journals (R. 1:21-6(c)(1)(A)); (4) no ledger card identifying attorney funds for bank charges (R. 1:21-6(d)); (5) no individual ledger card for each client (R. 1:21-6(c)(1)(B)); (6) no monthly three-way reconciliations (R. 1:21-6(c)(1)(H)); (7) no running checkbook balance (R. 1:21-6(c)(1)(G)); (8)

trust account records were not retained for seven years (R. 1:21-6(c)(1)); and (9) funds improperly transferred electronically from her ATA (R. 1:21-6(c)(1)(A).

On March 19, 2019, the OAE informed respondent of the above deficiencies and requested proof of "remedial efforts" to bring her records into compliance with R. 1:21-6. On April 12, 2019, respondent admitted both the deficiencies and her failure to maintain appropriate records.

In addition to the stipulated facts, on pages thirteen through fifteen of respondent's verified answer to the complaint, she asserted a number of affirmative defenses. On February 21, 2020, the special master entered a protective order, sealing information revealed in her affirmative defenses as confidential.

Respondent maintained that, although she committed ethics infractions, none of her misconduct was knowing or intentional. In support of her position she cited her mental health struggles. She further maintained that, "at all relevant times," she had "thousands of dollars personally available . . . through [her] checking, savings and family trust accounts." In October 2017, respondent began the process of closing her practice because she knew that she could no longer discharge her responsibilities and "did not want to risk damaging any client or his/her interests."

On January 3, 2020, the special master entered a case management order granting respondent one week to retain an expert to testify on her behalf regarding any mental health evidence. Respondent, however, produced neither a report nor expert testimony.

By order dated May 13, 2020, respondent was given until June 15, 2020 to "provide all discovery that she intends to rely upon." The order clearly stated that absent timely provision of discovery, its introduction would be precluded.

During the hearing, respondent testified in her defense that, although she "certainly did misappropriate," the misappropriation was "negligent." She pointed out that the period in question was "very discreet" and that she had practiced law for twenty years "with no issue ever." Further, she claimed she had "tens of thousands of [her] own personal money available" during that time. For example, she claimed that she had $20,000 in one account, plus five more accounts, the balances of which she did not identify and had not produced in discovery.

To prove her claim of no need for client funds, respondent submitted a redacted statement from her personal savings account. It appears, however, that, because of the untimeliness of the submission and her redaction of the document, the special master did not admit the statement in evidence, to which respondent raised no contemporaneous objection.

Respondent also testified regarding her mental health during the period at issue. Respondent explained that she had "a difficult time functioning" and "there were days when [she] couldn't get out of bed." Thus, the "last thing on [her] mind was checking [her] bank accounts." Respondent claimed that she was most unwell at the time she was representing Kropywnyckyj. She described herself as doing the bare minimum and admitted that she did not reply to e-mails or "pick up the phone and check voicemails." As a solo practitioner, respondent had no one to help her. She claimed that she called the New Jersey Lawyers Assistance Program, but her request for assistance was denied.

Finally, respondent stated, she "gave up [her] practice at its height" and became associated with the Law Office of William T. Cooper. Respondent testified that she did not seek medical attention and could not take medication because she was actively nursing her three children.

In terms of respondent's personal financial situation, she asked "why in the world" she would have sent her clients their checks if she had intended to use their funds. She continued:

> If – for example, if I got a $2,500 check, why would I go and spend $2,000, but at the same time send the client their check? If I knew that that's what I was doing, they would – that would be just plain stupid. Why wouldn't I just wait and then send the client the money when I had money to send? If the claim is that I had no money.

> I'm just not understanding what the theory behind this is. How is this in any way knowing? I had my own money, and why would I send a check that I knew couldn't be covered? It – it makes no sense. The clients had no idea when their refunds checks were coming in, so it's not like anybody would have known if I didn't send the check right away. Why wouldn't I just hold the check and then send it when I had money?
>
> I sent it right away because, A, I wasn't paying attention, I had a – a vague idea of what was in my accounts, and I just thought it would be covered. I just wasn't paying attention. That is really just what I need to convey: I wasn't – I wasn't paying attention, I had no idea what was in my account, I wasn't capable of – of keeping records or staying on top of it.
>
> As far as having the money in my business account, the reason why I did that is because I didn't have trust account checks and I didn't know if I could get myself to the bank to order them. And I didn't want to hold my clients' money, I wanted them to get their money quickly, so I figured better I send them a business check and they get their money right away, than I keep in it my savings – in my trust account and then try to get to the bank, whenever that would be, to order trust account checks.
>
> [T61-T62.]

According to respondent, she did the best she could under the circumstances. When she believed that her best was not "good enough," she stopped practicing solo and associated with a firm. However, during the July 21, 2020 ethics hearing, respondent claimed that she was no longer practicing law.

Moreover, respondent testified that, when she opened ATA2, in January 2017, the bank provided her only with blank starter checks. She did not see a need to get any trust account checks at that time. She made electronic transfers from her personal checking account when she was unable to get to the bank.

In written summations following the hearing, the OAE argued in respect of count one that, under RPC 1.7(a), respondent engaged in a concurrent conflict of interest because there was a significant risk that respondent's representation of the clients referred to her by Mid-Atlantic would be materially limited by her personal interest in receiving continued referrals from Mid-Atlantic. Second, respondent engaged in improper fee sharing with Mid-Atlantic, under RPC 5.4(a), as she and Mid-Atlantic each took, as a fee, a portion of the refund recovered via the tax appeal, which Mid-Atlantic negotiated, not respondent.

In respect of count six, the OAE argued that respondent had admitted that she had failed to maintain her books and records as required, in violation of RPC 1.15(d). Further, according to the OAE, respondent's refusal to rectify the deficiencies, on the ground that she had closed her practice, should be considered in aggravation, as she was required to rectify the deficiencies.

As for counts two through five, all of which charged respondent with knowing misappropriation of client funds, the OAE argued that it had proven its claims based on circumstantial evidence. Specifically, respondent knew or had

to know that her personal use of the funds in the ABA would result in the invasion of entrusted client settlement funds.

In the Schwarting and Ouzoinian matters, before respondent deposited $11,450 of their refunds in the ABA, she had made at least one balance inquiry. Moreover, on January 17, 2017, the day before that deposit, she had replenished a negative balance in the ABA by depositing $625 and reversing a $760 ABA check that she had made payable to cash, at a time when there were insufficient funds in the account to cover the check. Yet, despite her awareness that she had only deposited $625 in personal funds against a negative balance, along with the $11,450 in client refunds, respondent issued checks in the amount of $760 and $690, which exceeded $625.

The OAE also argued that, absent the $500 deposit in the ABA on January 27, 2017, the same day she issued the Schwartings' check, and the $1,000 deposit on the day after she issued the Ouzoinians' check, the checks would not have cleared. Moreover, on February 3, 2017, respondent deposited $1,385 in her ABA so the Mahyars' check would clear.

The OAE provided other similar examples in support of its knowing misappropriation claims in respect of clients Begum, the Ravitzes, Melchione, and D'Alessandro. In the case of Begum, when respondent deposited the $2,531.40 refund in the ABA, on June 29, 2017, the balance was -$858.84. She

had not deposited her own funds in the account since June 2, 2017, which she immediately spent; the next deposit was not until July 10, 2017, when she deposited $800. Meanwhile and significantly, on July 6, 2017, just a week after she deposited Begum's refund, respondent made a $1,696.70 electronic payment from the ABA to her children's daycare center.[7] The negative ABA balance before the June 29 deposit of Begum's refunds; respondent's failure to deposit any personal funds in the account prior to the July 6 payment to the day care provider; and her subsequent payment to the day care provider, demonstrate that she knew that her actions were likely to result in the invasion of Begum's funds.

In the Ravitz, Melchione, and D'Alessandro matters, on January 12, 2018, respondent deposited all four clients' checks, totaling $8,554.25, in her ABA. At the time, her ABA balance was -$801.19. Thereafter, she made twenty-two purchases, eight of which were "clearly for personal expenses," before the next deposit on January 25, 2018 in the amount of $1,369.05. Again, according to the OAE, absent that deposit, the checks to her clients would not have cleared the ABA.

[7] The OAE conceded that it had failed to establish the RPC 1.15(b) charge in respect of Begum based on respondent's assertion that her delay in disbursing the client's refund was due to the issue between Begum and the buyer of her property regarding which of them was entitled to the refund.

Citing In re Toner, ___ N.J. ___ (2010), the OAE argued that, in that case, we found that, despite the attorney's secretary's unauthorized withdrawals from his business account, the attorney knew that he had drawn against client funds when he deposited those funds in the account and then paid his mortgage without having deposited personal funds. In the Matter of Terrance N. Toner, DRB 09-118 (December 16, 2009) (slip op. at 25). According to the OAE, respondent's pattern of depositing client funds in her ABA and then using the monies for personal expenses, without maintaining personal funds in the ABA, established knowing misappropriation. Further, citing In re Pomerantz, 155 N.J. 122, 133 (1998), the OAE argued that respondent's juggling of funds between and among her personal, trust, and business accounts belied her claimed lack of knowledge of the balances.

The OAE argued that, because respondent knowingly misappropriated client funds in the Schwarting; Ouzoinian; Mahyar; Begum; Ravitz; Melchione; and D'Alessandro matters, she also violated RPC 8.4(c). Further, she violated RPC 8.4(b), that is, N.J.S.A. 2C:21-15, in respect of Begum, the Ravitzes, Melchione, and D'Alessandro.

In respect of the Kropywnyckyj matter, the OAE argued that respondent knew, or should have known, that the $2,500 settlement funds that her client had entrusted to her would be impacted by her use of ABA funds. Indeed, on August

7, 2017, the day she deposited his monies, the ABA had a negative balance of more than $1,500. When the settlement agreement was finalized a week later, on August 14, 2017, respondent's ABA was still short by more than $1,000. Although plaintiff's counsel made a final change to the documents on that date, no changes were made thereafter.

According to the OAE, the circumstantial evidence proved, clearly and convincingly, that respondent knowingly misappropriated the $2,500 given to her by Kropywnyckyj. When she deposited the funds in her ABA, the account had a negative balance. Until October 18, 2017, she repeatedly delayed finalizing the settlement because the $2,500 did not remain intact in her ABA; to the contrary, she had already spent the funds. Most telling, when the time came, respondent checked the balance in her ABA and deposited the exact amount required ($470) to fund the settlement payment to the plaintiff. Thus, not only did she knowingly misappropriate the funds, she also violated RPC 1.15(b) by delaying her required disbursement to the plaintiff.

Further, the certification respondent submitted to the court in opposition to the motion to enforce the settlement contained multiple misrepresentations, including her claim that the settlement funds had been maintained in a trust account.

Finally, in respect of the Kropywnyckyj matter, respondent violated RPC 3.2 and RPC 8.4(d) by drawing out the settlement of the case and forcing counsel to file a motion to enforce. She violated RPC 3.3(a)(1) and RPC 8.4(c) by falsely certifying, in her opposition to the motion, that the $2,500 had been maintained in her trust account between her receipt of the funds from her client and their disbursement to plaintiff's counsel.

In addition to circumstantial evidence, the OAE argued that respondent's willful blindness contributed to her knowing misappropriation of client funds. According to the OAE, she "readily admitted that she completely ignored the accounts and operated the accounts with reckless abandon." Further, "[o]nce she made the decision to introduce client funds into her ABA and abdicated her responsibility to monitor those funds while making absolutely no effort to track the security of those funds, she was willfully blind to the risk of misappropriation of those client funds."

Finally, the OAE noted the incompatibility of respondent's claims that, on the one hand, she was unable to keep track of her practice and her client's finances while, on the other hand, no clients were affected by that inability. The OAE rejected the premise that respondent could not know what was in her accounts when she engaged in a demonstrable pattern of just-in-time replenishment to cover the checks she issued to clients.

The OAE further argued that respondent had failed to meet her burden of establishing any mental health defense by clear and convincing evidence. R. 1:20-6(c)(2)(B). Specifically, respondent submitted no proof that she suffered from any condition, nor that the asserted condition impacted her ability to properly monitor her accounts to the point where she did not know that she was using client funds. Moreover, even if respondent had provided proof of her condition, it would not have negated the knowing element of knowing misappropriation, pursuant to the standard set forth in In re Jacob, 95 N.J. 132 (1984).

In respondent's brief to the special master, she argued that the OAE had failed to meet its burden of establishing her knowing misappropriation of client funds by clear and convincing evidence. According to respondent, "as sole proof of the violations in this matter," the OAE merely established that "money was deposited into [her] account and taken out of [her] account."

Respondent argued that her use of client funds was negligent and caused by her untreated mental illness. She represented that the condition was so serious that she was "completely unable to function or handle anything other than very basic responsibilities, and even those were difficult at times." These basic responsibilities comprised taking care of her children and her clients.

Respondent described the attempts she made to turn over her practice to another attorney. She said that she sought the NJLAP's assistance in managing her practice but was offered only counseling. She explained:

> So I was left in a position of being utterly crippled and having no one to help me handle the huge responsibility of running a practice. With all that, the very last thing I was paying attention to was how much money was in my account and balancing my books. I was depositing money and had a very general idea of what was in my account. Every transaction I made which ended up using client funds, I truly believed I was using my own money. I would have never ever intentionally utilized client funds.
>
> [Rb3.][8]

Respondent also emphasized that she had practiced law, without incident, for twenty years, and again asserted that she had no personal need to use client funds, as demonstrated by her bank statements. Further, she gave up her law practice in November 2017, which she would not have done if she were "looking for money."

Respondent also maintained that the OAE's evidence established that, at the same time [she] was using [client] funds, [she] had already sent the clients their checks." She claimed that her prompt payment of her clients' refunds to them disproved that she had knowingly misappropriated the monies. Finally,

[8] "Rb" refers to respondent's October 1, 2020 post-hearing brief to the special master.

respondent deposited the funds in the ABA because she did not have ATA2 checks. She thought it better to send ABA checks "immediately" rather than wait for ATA2 checks to be ordered, processed, and delivered.

In conclusion, respondent argued that she believed she had been spending her own money; that she was not keeping track of her funds other than "a vague idea" in her head; and she "simply did the best [she] could do under the circumstances."

In a written decision dated October 22, 2020, the special master noted that respondent admitted that she had "consistently used client's [sic] funds for her own personal needs or those of her children" without her clients' consent. Further, "[t]his was not just a one-time lapse, but numerous client[s'] funds were used."

The special master found that respondent had not violated RPC 1.7(a) and RPC 5.4(a) as charged in Count One, observing "I do not find that Count One of the Complaint was adequately proven. There was no clear testimony other than from the Respondent as to the facts supporting Count One." Regarding Count Six, he observed that respondent had admitted to the enumerated violations of R. 1:21-6. We construe this as a finding that respondent violated RPC 1.15(d).

In respect of respondent's claimed medical issues, the special master observed that "there was absolutely no substantiation of a medical issue to justify her consistent use of client's [sic] funds," which she dissipated "immediately as they were received . . . to pay her own personal bills." Further, respondent's mental illness "did not affect her ability to handle tax appeals and her general litigation practice."

Although the special master deemed respondent "a very sympathetic witness," her concluded that the stipulated facts and Wilson and its progeny mandated her disbarment.

In its brief to us, the OAE requested that we uphold the special master's findings, "but for his findings as to Count One." In support of its request, the OAE relied on its October 16, 2020 written summation to the special master, summarized above.

In respondent's brief to us, she argued that the OAE failed to meet its burden of proving that she knowingly misappropriated client funds. Like the OAE, she, too, relied on her brief to the special master. In addition, she submitted for our review a copy of our decision in In the Matter of James K. Record, DRB 09-363 (May 17, 2010), which she claimed is analogous to this case; a redacted copy of one of her bank statements, as proof that she did not

require client funds during the relevant period; and an article about her asserted disorder and why its sufferers do not seek treatment.

Respondent further argued that the Jacob standard has never been her defense. She did not argue that her mental health issues prevented her "from knowing what [she] was doing and/or from understanding what [she] was doing." Rather, her position was that she believed she had "ample personal funds in [her] account" and, thus, she "did not know [she] was misappropriating client funds." Indeed, at one point, she asked whether she would risk her career by paying a $20 bill at McDonald's.

Finally, respondent maintained that, like the attorney in In re Record, 203 N.J. 426 (2010), although she had "legal knowledge" of misappropriation, she did not have "factual knowledge," because she believed she was spending her own money.

In short, at the time of the misappropriations, respondent was "struggling with some serious issues" and was "incapable of handling [her] affairs or properly maintaining [her] practice." Thus, she did not keep appropriate records or track the funds "coming in and going out from each account, so [she] truly believed [she] was spending [her] own money." She asserted that "[t]his carelessness and negligence arising out of [her] disorder [was] the sole reason why any misappropriation occurred."

At oral argument before us, respondent clearly stated that she was not seeking to use her mental health as a defense to the knowing character of her acts, pursuant to the Jacob standard. She also admitted that she would routinely check her attorney account balances prior to disbursing settlement amounts to clients and would systematically replenish any shortfalls with her personal funds. She asserted that she had closed her practice more than a year before the OAE's knowing misappropriation investigation and stated that these disciplinary proceedings would not "have any impact upon [her] one way or the other."

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.

We find that respondent knowingly and repeatedly misappropriated client funds, in violation of RPC 1.15(a), RPC 8.4(b), RPC 8.4(c), and the principles set forth in Wilson. She further violated RPC 1.7(a); RPC 1.15(b) and (d); RPC 3.2; RPC 3.3(a)(1); RPC 8.4(c); and RPC 8.4(d). We determine to dismiss the RPC 5.4(a) charge.

The special master did not find clear and convincing proof of a conflict of interest as charged in Count One. Under RPC 1.7(a)(2), a concurrent conflict of interest exists if

> there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

Where a concurrent conflict of interest exists, a lawyer may nonetheless proceed with the representation if, among other requirements, "each affected client gives informed consent, confirmed in writing, after full disclosure and consultation." RPC 1.7(b)(1).

Here, it is evident that there was a significant risk that respondent's representation of one or more of her tax appeal clients would be materially limited by her "personal interest," that is, continued referrals from Mid-Atlantic. Her loyalties to Mid-Atlantic and to her clients were, thus, divided. She, thus, violated RPC 1.7(a)(2), as she did not obtain informed written consent.

In the OAE's March 19, 2019 letter to respondent, it identified respondent's individual violations of R. 1:21-6. On April 12, 2019, respondent admitted the violations, in writing. Thus, the record contains clear and convincing evidence in support of the stipulated violation of RPC 1.15(d).

However, we agree with the special master's finding that the record does not contain clear and convincing evidence of respondent's violation of RPC 5.4(a), which prohibits a lawyer from sharing legal fees with a nonlawyer, except under certain circumstances not applicable in this case. Neither Mid-

Atlantic nor respondent collected fees from their tax appeal clients and shared them with each other. See, e.g., In re Gembala, 228 N.J. 275 (2017) (loan modification company sent clients to the attorney, who split his fee with the company); In re Tarter, 230 N.J. 388 (2017) (third party company located individuals behind in their mortgage payments for the purpose of filing a mass tort predatory lending lawsuit; the company referred the individuals to the attorney with whom the company shared its fee); and In re Moeller, 177 N.J. 511 (2003) (third party company that marketed living trusts retained the attorney to review its products with its clients; the clients paid a fee to the company, which then paid the attorney; the company also assisted the attorney in soliciting clients via a direct mail marketing campaign; he shared his fee in those cases as well).[9]

Here, Mid-Atlantic and respondent each had a retainer agreement with the clients. They did not share fees with each other. The OAE's reliance on Opinion 25 of the Committee on the Unauthorized Practice of Law, 130 N.J.L.J. 115 (1992), misses the mark.

[9] Member Petrou would find a violation of RPC 5.4(c) under In re Moller, concluding that the second, separate retainer with respondent was a chimera with no practical impact upon the parties' relationships as previously established by the client's initial agreement with Mid-Atlantic establishing both respondent's retention and fee, such that this second retainer elevates form over substance.

In Opinion 25, the Committee considered the propriety of property tax consultants soliciting homeowners to pursue real estate assessment appeals. The consultants entered into contingent fee arrangements with the homeowners. If necessary, the consultants engaged attorneys, at no additional cost to the homeowners.

The Committee observed that, in New Jersey, when an individual, who is not an attorney, contracts to procure a reduction in real estate taxes which necessitates an appeal to a county tax board, that individual illegally engages in the unauthorized practice of law. Thus, the solicitation of tax appeals by individuals not licensed to practice law or tax consulting groups constitutes the unauthorized practice of law.

Further, the Committee noted that, if the attorney receives a portion of the fee the consultant receives as compensation, as per its contingent fee arrangement with the homeowner, the attorney violates RPC 5.4(a), which prohibits a lawyer from sharing fees with a nonlawyer. Such is not the case with respondent, however.

Mid-Atlantic solicited the tax appeal clients and entered into a fee agreement with them. Mid-Atlantic referred its clients to respondent to handle the appeals, and respondent entered into her own fee agreement with the clients,

albeit on terms set by Mid-Atlantic. Thus, Mid-Atlantic and respondent avoided a fee-sharing arrangement.

Although Mid-Atlantic's and respondent's arrangement was unethical on other grounds, improper fee-sharing was not a part of it. Stated differently, this was not a situation where the clients were unaware of the amounts received by respondent and Mid-Atlantic. Therefore, we dismiss the RPC 5.4(a) charge.

The crux of respondent's misconduct was her systematic knowing misappropriation of client trust funds. 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.
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> [In re Noonan, 102 N.J. 157, 159-60 (1986).]

"The burden of proof in proceedings seeking discipline . . . is on the presenter. The burden of going forward regarding defenses . . . relevant to the charges of unethical conduct shall be on the respondent." R. 1:20-6(c)(2)(C). To be sure, there must be clear and convincing proof of an attorney's knowing misappropriation in order to apply the ultimate sanction of disbarment. As the Court stated in In re Konopka, 126 N.J. 225 (1991),

> [w]e insist, in every Wilson case, on clear and convincing proof that the attorney knew he or she was misappropriating . . . . If all we have is proof from the records or elsewhere that trust funds were invaded without proof that the lawyer intended it, knew it, and did it, there will be no disbarment, no matter how strong the suspicions are that flow from that proof.
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> [Id. at 234.]

The clear and convincing standard was described in In re James, 112 N.J. 580 (1988), as

> [t]hat which "produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established," evidence "so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue."
>
> [Id. at 585.]

Proving a state of mind, in the absence of an outright admission, may pose difficulties. However, "an inculpatory statement is not an indispensable ingredient of proof of knowledge . . . . Circumstantial evidence can add up to the conclusion that a lawyer 'knew' or 'had to know' that clients' funds were being invaded." In re Johnson, 105 N.J. 249, 258 (1987).

An examination of respondent's financial records and practices demonstrates, clearly and convincingly, that she knowingly misappropriated client funds belonging to the Schwartings; the Ouzoinians; the Mahyars; Begum; Kropywnyckyj; the Ravitzes; Melchione; and D'Alessandro. In every case, respondent admitted that she used the clients' funds for personal expenses without their permission. The only question is whether she did so negligently or knowingly.

Powerful circumstantial evidence of respondent's knowing mental state supports our conclusion that she knew or had to know that she was invading client funds. On January 7, 2017, Respondent opened her ATA2 with the Schwarting and Ouzoinian refunds. Rather than maintain their $11,465.74 in

settlement proceeds in ATA2, as required, on January 18, 2017, she transferred $11,450 to her ABA, which had a negative balance. Respondent knew of that negative balance as a result of her balance inquiry on January 9 and her continued spending and accumulation of bank fees thereafter. In addition, a $1,125 check that she had issued had not yet been cashed. On the day of the $11,450 deposit, the outstanding check was presented for payment, thus invading her clients' funds.

Furthermore, on January 19, 2017, the day following the deposit of the Schwartings' and the Ouzoinians' funds, she issued and negotiated a $690 check, payable to cash, and also withdrew $780.

Although respondent issued her clients' refund checks on January 27 and 31, 2017, the checks did not clear the bank until February 7, 2017. Meanwhile, between January 26 and February 6, 2017, respondent made $1,056.91 in purchases using her ABA debit card. On February 6, the ABA balance was only $10,357.40 and, thus, was short by $144.86. Yet, on the following day, February 7, 2017, her ABA held sufficient funds when the Schwartings and Ouzoinians negotiated their checks, due to respondent's just-in-time $3,735 online transfer from her ATA2.

On February 3, 2017, respondent deposited the Mahyars' $3,733.52 in her ATA2. On February 6, 2017, she issued to the Mahyars an ABA check in the

amount of $3,397.52. At the time, she should have been holding $13,899.78 for the Schwartings, Ouzoinians, and the Mahyars, but the balance was only $10,357.40. Thus, her ABA was short by $3,542.38.

Respondent's handling of the Mahyars' funds demonstrates that she knew what was happening with her bank accounts. When respondent issued the Mahyars' $3,397.52 ABA check, on February 6, 2017, she certainly knew that she had no funds in the ABA for the benefit of the Mahyars because, the next day, she transferred $3,375 from her ATA2 to her ABA to cover the check she had issued the day before.

In the Begum matter, respondent deposited her client's $2,531.40 refund check in her ABA on June 29, 2017, when the account had a negative balance. Almost immediately, on July 5, 2017, she made a $1,696.70 payment to her children's day care center. On the following day, she issued the first of four checks written to her nanny during the month of July.

Respondent did not send Begum's $1,265.70 ABA check, representing her share of the proceeds, to her until December 30, 2017. On January 10, 2018, Begum cashed the check, which she was only able to do because respondent made a $950 deposit on January 5 and a $200 deposit on January 8, which raised her ATA balance to $1,036.51. Meanwhile, between June 29, 2017 and January

2, 2018, respondent's ABA had fallen below the required balance of $1,265.70 more than fifty times.

Another telling example of respondent's acute knowledge of her ABA balance occurred in respect of the knowing misappropriation of Kropywnyckyj's funds. On August 7, 2017, respondent deposited her client's $2,500 settlement payment in her ABA, which, at the time had a -$1,538.84 balance. The next day, she withdrew $400 from an ATM.

From September 6 through October 3, 2017, respondent's ABA had a negative balance. In August, the parties had reached agreement on the terms of the settlement, but respondent did not issue the required $2,500 settlement check to plaintiff's counsel. Indeed, it was impossible for her to do so because her ABA no longer held her client's funds. Even after plaintiff's counsel threatened and finally filed a motion to enforce the settlement, respondent still failed to turn over the funds, because she had spent them.

On October 18, 2017, respondent finally issued the $2,500 settlement check to her adversary. On that date, her ABA balance was only $2,030.65. On October 20, 2017, respondent deposited exactly $470 in her ABA, raising the balance to $2,500.65 – just enough to cover the $2,500 check, which was negotiated that same day.

Finally, in respect of the Ravitzes, Melchione, and D'Alessandro, respondent's deposit and use of client funds was more of the same. When she deposited their combined refunds totaling $8,554.25, of which $7,725.27 was to remain inviolate, her ABA balance was -$801.19. Once again, she proceeded to make twenty-two purchases before attempting to replenish the account with the $1,369.05 deposit on January 25, 2018.

Following our review of the record, we determine that the OAE proved, by clear and convincing evidence, that respondent repeatedly engaged in the knowing misappropriation of entrusted funds, in violation of Wilson. She consistently deposited client funds in her ABA, spent them down, and made just-in-time deposits in the ABA when she issued her clients' refund checks to them, as demonstrated clearly throughout, but most irrefutably in the Mahyar and Kropywnyckyj matters.

Having concluded that respondent's invasion of client funds was intentional and knowing, we need not reach the "willful blindness" line of cases; we do so here only in this spirit of thoroughness. Particularly, we reviewed In re Fleischer, In re Shultz, and In re Schwimer, 102 N.J. 440 (1986). In those cases, the attorneys commingled personal and trust funds and, ultimately, invaded clients' funds. The Court rejected the attorneys' defense that poor

accounting procedures prevented them from knowing the amount of their own funds in the trust account:

> It is no defense for lawyers to design an accounting system that prevents them from knowing whether they are using clients' trust funds. Lawyers have a duty to assure that their accounting practices are sufficient to prevent misappropriation of trust funds.
>
> [Id. at 447.]

Finding overwhelming evidence that the attorneys had knowingly misappropriated clients' funds, the Court ordered their disbarment.

Six months later, the Court decided In re Skevin, 104 N.J. 476 (1986). In Skevin, the attorney was out of trust in amounts ranging from $12,000 to $133,000. The attorney admitted the shortages but pointed out that he had deposited $1 million of his own funds in the trust account to cover personal withdrawals. The Court found that, because the attorney did not maintain an accounting or running balance of his personal funds in the account, each time he made withdrawals for himself and for clients before the receipt of corresponding settlement funds, there was a "realistic likelihood of invading the accounts of another client since respondent had no way of knowing what the balances were." Id. at 485. The Court, thus, equated "willful blindness" to knowledge:

> The concept arises in 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. Such cases should be viewed as acting knowingly and

> not merely as recklessly. The proposition that willful blindness satisfies for a requirement of knowledge is established in our cases [citations omitted].
>
> [Id. at 486.]

The attorney was disbarred. Skevin is considered the seminal willful blindness case.

Another applicable decision is In re Pomerantz, 155 N.J. 122 (1998), in which the Court found that the attorney "had used her client's funds for her own purposes without authorization." Id. at 133. The Court explained:

> Her juggling of funds between her personal, business, and trust accounts belies her claimed lack of knowledge that she was out-of-trust. Respondent's behavior demonstrates that she was aware of shortfalls in her accounts. For example, respondent paid D'Esposito from the trust account rather than the business account when the business account did not contain enough money to cover the amount due D'Esposito. We have previously observed that when an attorney makes a loan to a deficient trust account, it indicates that the attorney may be "personally aware on that date that his handling of the trust account had produced the deficit result."
>
> [Ibid.]

The attorney's defenses constituted willful blindness, in the Court's eyes, because knowledge that the invasion of client funds is likely as a result of an attorney's conduct constitutes "a state of mind consistent with the definition of knowledge in our statute law." Ibid. In other words, the Court found that "even if" it had accepted Pomerantz's contentions that "she was unaware that she was

out-of-trust, her 'willful blindness' satisfie[d the Court] that she knowingly misappropriated client funds." Id. at 135.

The Court has continued to disbar willfully blind attorneys in more recent cases. In In the Matter of Thomas Andrew Clark, DRB 16-111 (January 11, 2017) (slip op. at 59), we observed:

> 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). Rather, 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.

See also In re Clark, 228 N.J. 521 (2017).

Considering that line of cases, we determine as an alternative and sufficient theory that, even if respondent had not been so clearly and demonstrably aware of her invasion of client funds, the OAE also proved that she was indefensibly and willfully blind to her invasion of those funds. We, like the special master, reject respondent's argument that her use of her clients' funds

was merely negligent and caused by her mental health issues. Put another way, "even if we accept respondent's contentions that she was unaware that she was out-of-trust, her 'willful blindness' satisfies us that she knowingly misappropriated client funds." Pomerantz, 155 N.J. at 135.

We are mindful that respondent explicitly stated that she did not seek to have her undocumented mental illness considered as a Jacob defense. We feel nonetheless required to address that issue here, as the impact of respondent's mental health was a central issue raised by respondent during the ethics hearing and in her written submissions. We again agree with the special master, who observed that respondent offered no proof that she suffered any diagnosed physical or mental condition during the applicable period, and offered no proof of a causal connection between the condition and her failure to maintain her clients' funds inviolate.

We are unpersuaded by respondent's reliance in her brief upon In re Record, 203 N.J. 426 (2010), in which the Court imposed a three-year suspension on an attorney who dissipated a client's $15,000 after he had deposited the funds in his personal checking account. In the Matter of James K. Record, DRB 09-363 (May 17, 2010) (slip op. at 2).

In Record, the client wired a $25,000 retainer to respondent's law firm for respondent's investigation of a harassment claim. Id. at 4-5. In addition, the

client gave respondent a $15,000 check, which was payable to him to cover the cost of a private investigator. Id. at 7. Without the grievant's knowledge, respondent deposited the check in his personal account, which had a $974.47 balance at the time. Id. at 8.

Although respondent issued a $5,000 personal check to the investigator, the remaining $10,000 did not remain intact in his personal bank account. Id. at 9-10. Instead, respondent utilized the funds for personal debts, such as credit cards and loans. Id. at 10. None of the disbursements related to the client's case, and the client never authorized the expenditure of her funds. Ibid. The attorney eventually replenished his account and disbursed $10,000 to the investigator. Id. at 11.

When the grievant's new lawyer wrote to the attorney and demanded the return of the previous retainer and the $15,000, he was shocked, claiming that he had "no idea" that he had spent the money, and became hysterical. Id. at 11-12. In the attorney's answer to the ethics complaint, he stated that he had lost track of the balance in his account but that he usually left a $20,000 to $30,000 balance in the account. Id. at 15.

According to the attorney, during the time in question, he was drinking heavily and had suicidal thoughts. Id. at 16-17;19. A former girlfriend also was harassing him. Id. at 19. Respondent never balanced his checkbook and believed

he maintained plenty of money in his account. Id. at 17. These "considerable problems caused him to lose track of his personal life at the time." Id. at 18. At the same time, however, he agreed that he had been able to represent his clients and was capable of paying his bills. Id. at 18-19.

The attorney submitted a letter from his internist attesting to his medical problems and alcohol abuse, as well as the stressors in his life. Id. at 19-20. He also submitted a report from another medical doctor who had interviewed the attorney and reviewed his medical records. Id. at 20-21.

Based on the evidence, the special master concluded that it was equally likely that respondent knew what he was doing when he took the client's funds or that he had lost track of what he was doing with the personal bank account. Id. at 30. However, given his poor mental health, alcohol abuse, and the stress of being harassed, the special master found that the OAE had failed to establish, by clear and convincing evidence, that the attorney had knowingly misappropriated the client's funds. Id. at 30. In that case, we agreed.

In our view, respondent's internist had offered diagnoses of anxiety disorder; panic attacks; depression, and alcohol abuse. Id. at 38. She opined that, at the time he misappropriated the $15,000, respondent was "near a crisis level." Ibid. Respondent's testimony confirmed what was going on in his life at the time. Ibid.

We agreed that the attorney had not met the Jacob standard of not knowing that his misuse of the client's funds was wrong. Id. at 39. However, although he had the "legal" capacity to know that he was invading her funds, he did not have "factual" knowledge that he was doing so. Ibid. In our view, the matter was a "close case." Id. at 42. However, the proofs did not "clearly and convincingly establish that respondent deliberately, intentionally, knowingly availed himself of [his client's] money." Ibid.

At first blush, Record provides some support for respondent's claim that her condition made her factually unaware of what she was doing with the funds in her ABA. However, unlike Record, despite several opportunities, respondent provided no proof that she has any of the physical or mental conditions of which she spoke or that those conditions were causally related to her misappropriation of her clients' funds. Thus, Record cannot save her license. Moreover, the attorney in Record did not make repeated, just-in-time replenishments prior to disbursing client funds.

Finally, we find no legal significance to respondent's unevidenced factual claim that, because she had thousands of dollars in personal bank accounts, she had no need of her clients' funds for personal use. The special master gave respondent the opportunity to present proof of her claim, but she failed to do so. We recognize that respondent submitted a bank statement to us. However, we

reject the document, as it was not included in the record before the special master. Moreover, even assuming that respondent had personal funds in other accounts, that fact would not negate the knowing element in knowing misappropriation. Neither motive nor financial need are required elements of knowing misappropriation, and it is well-settled that an attorney's ability to make restitution is no defense to the improper use of client funds. See e.g., In re Livingston, 217 N.J. 591 (2014) (attorney disbarred for using trust account funds to pay household expenses and to avoid overdrafts in his business account; we rejected the attorney's defense that, because he could cover the improper withdrawals from the trust account with funds in his various personal accounts, he did not knowingly misappropriate the monies); In re Blumenstyk, 152 N.J. 158, 161 (1997) (attorney disbarred for using trust funds for personal expenses, such as a family vacation and his son's Bar Mitzvah, and to avoid overdrafts in his business account; although he replenished the trust account with personal monies in order to make restitution, the Court noted that "restitution does not alter the character of knowing misappropriation and misuse of clients' funds"); In re Barlow, 140 N.J. 191, 198-99 (1995) (intent to repay funds or otherwise make restitution is not a defense to knowing misappropriation); and In re Noonan, 102 N.J. at 160 (noting that, under Wilson, it makes no difference that the lawyer "intended to return the money when he took it").

As a result of respondent's knowing misappropriation of client funds in the Begum, Kropywnyckyj, Ravitz, Melchione, and D'Alessandro matters, the OAE also charged her with having violated RPC 8.4(b). Specifically, her actions constituted the misapplication of entrusted property, in violation of N.J.S.A. 2C:21-15, which provides, in relevant part, that "[a] person commits a crime if he applies or disposes of property that has been entrusted to him as a fiduciary." A violation of RPC 8.4(b) may be found even where, as here, the criminal conduct is uncharged. In re McEnroe, 172 N.J. 324 (2002). We conclude that respondent's knowing misappropriation of the above clients' funds violated N.J.S.A. 2C:21-15, which, in turn, constituted a violation of RPC 8.4(b).

Respondent also violated RPC 3.2 and RPC 8.4(d) through her delay in turning over the funds to plaintiff's counsel in the Kropywnyckyj matter, forcing him to file and argue a motion to enforce. Certainly, her conduct prevented the litigation from concluding in a timely fashion, a violation of RPC 3.2. Moreover, respondent wasted judicial resources by refusing to pay the $2,500 settlement, which she did not have because she had spent the funds, and, thus, forcing plaintiff's counsel to file an unnecessary motion to enforce, a violation of RPC 8.4(d).

In respect of the remaining RPC charges, respondent violated RPC 1.15(b) in the Kropywnyckyj matter by failing to promptly turn over the $2,500

settlement monies to plaintiff's counsel until October 2017 and, then, only after he had filed a motion to enforce the settlement. Indeed, for all intents and purposes, the case had settled on August 14, 2017; no further objections or changes to the proposed form of agreement were made after that date. There was no reason for respondent's delay in executing the final documents and turning over the funds, except that her ABA no longer held those funds, which respondent had dissipated.

Respondent did not violate RPC 1.15(b) in the Begum matter. As the OAE conceded, Begum's negotiation with the buyer justified respondent's retention of the settlement proceeds between June 2017 and December 30.

In addition to having been charged with violating RPC 8.4(c), by virtue of her knowing misappropriation of client funds, the OAE charged respondent with an additional violation of the Rule as the result of her false representations in her certification in opposition to the motion to enforce in the Kropywnyckyj case that she was holding the settlement funds inviolate. She, thus, violated RPC 3.3(a)(1) and RPC 8.4(c).

In sum, the clear and convincing evidence established that respondent knowingly misappropriated client funds, in violation of RPC 1.15(a), RPC 8.4(c), and the principles set forth in Wilson (eight instances); RPC 1.7(a); RPC

1.15(b); RPC 1.15(d); RPC 3.2; RPC 3.3(a)(1); RPC 8.4(b) (five instances); RPC 8.4(c); and RPC 8.4(d).

In light of respondent's knowing misappropriation of client funds, disbarment is the only appropriate sanction, pursuant to Wilson. Therefore, we need not address the appropriate quantum of discipline for respondent's additional ethics violations.

Member Campelo was absent.

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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: 

Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Angela Jupin
Docket No. DRB 20-342

Argued: April 15, 2021

Decided: May 26, 2021

Disposition: Disbar

Members	Disbar	Absent
Gallipoli	X	
Singer	X	
Boyer	X	
Campelo		X
Hoberman	X	
Joseph	X	
Menaker	X	
Petrou	X	
Rivera	X	
Total:	8	1

Johanna Barba Jones
Chief Counsel