Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-225
District Docket No. XIV-2017-0290E

In the Matter of	:
Lawrence S. Berger	:
An Attorney at Law	:

Decision

Argued: February 18, 2021

Decided: June 8, 2021

Hillary K. Horton 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 a reprimand filed by Special Master Melinda L. Singer, Esq. The formal ethics complaint charged respondent with having violated RPC 1.7(a)(2) (five instances – concurrent conflict of interest); RPC 1.8(a) (five instances – improper business transaction with a client); RPC 1.15(a) (one instance each – failure to safeguard funds and

commingling personal funds with client or third party funds; and eight instances – negligent misappropriation of client and third-party funds); RPC 1.15(c) (failure to keep separate property in which the lawyer and another person claim interests); RPC 1.15(d) (failure to comply with the recordkeeping provisions of R. 1:21-6); RPC 5.3(a) (failure to supervise nonlawyer employees by adopting or maintaining reasonable efforts to ensure that the conduct of the nonlawyers is compatible with the professional obligations of the lawyer); RPC 5.3(c) (failure to supervise nonlawyer employees who engage in conduct that would be a violation of the RPCs if engaged by a lawyer); RPC 7.1(a)(1) (misleading communication about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement); RPC 7.5(d) (inclusion in firm name of an individual without responsibility and liability for the firm's performance of legal services); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

For the reasons set forth below, we determine to impose a censure, with a condition.

Respondent was admitted to the New Jersey bar in 1965 and has no disciplinary history. At the relevant times, he was a member of Berger & Bornstein, LLC, a law firm in Morristown, New Jersey.

This entire matter arose from an April 21, 2017 overdraft of the Berger and Bornstein, LLC (B&B) attorney trust account (ATA). Office of Attorney Ethics (OAE) Disciplinary Investigator and Certified Fraud Examiner Alison Callery testified that the overdraft prompted a disciplinary investigation, which included an audit of B&B's financial books and records. Respondent cooperated throughout the investigation, which led to the discovery of several unethical practices, as detailed below.

Respondent was the only member of B&B, a New Jersey limited liability company. At the relevant times, B&B employed attorneys Robert Allen Bornstein, Joseph Sergeant, and Gregory Cannon, as well as bookkeeper Darlene Soares, among others. Soares had been employed by B&B since 2000. Bornstein, who had been employed by respondent since 1979, spent approximately eighty to ninety percent of his time on B&B client matters involving the corporate subsidiaries at issue in counts one through five of the formal ethics complaint.

Sergeant, who had been a B&B associate for approximately twenty-five years, handled residential real estate closings "here and there and so on." The record does not reflect Cannon's length of employment, only that he separated from B&B sometime prior to April 21, 2017.

Ninety percent of B&B's legal work pertained to United States Land Resources, L.P. (USLR), a company with ownership interests in other entities, typically limited partnerships and limited liability companies.[1] The entities were created primarily for the purpose of acquiring New Jersey real estate.

Respondent was a limited partner of USLR, with a 49.5% interest. Success Treuhand, GmbH (Success), a German Trust corporation, also was a limited partner of USLR, with a 49.5% interest. Eckart R. Straub, a German citizen, was the sole trustee of Success, which Callery described as Straub's company. Straub had been respondent's business partner for "many years." Respondent never had "any ownership of any kind, direct or indirect," in Success; never was an officer

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[1] A limited partnership is a relationship in which one or more partners are not involved in the day-to-day management of the business. Often, a limited partner, sometimes known as a "silent partner," will serve solely as an investor in the business, with the funds that the limited partner has contributed being the extent of its liability. However, since the limited partner does not have decision-making power in the company, withdrawing funds – even just the amount the limited partner has already contributed – cannot be done without the approval of a general partner.

Limited partnerships have at least one general partner to oversee the day-to-day operations of the business. A general partner may invest money into the company. However, a general partner may also be personally liable for the debts of the company, while the limited partner is not. Only a general partner's personal assets (in addition to the business assets) can come into play when it comes to satisfying the company's debts.

A common purpose of a limited partnership is the purchase of real estate. There may be several limited partners for the purpose of raising additional funds to purchase the real estate, as long as there is at least one general partner. The benefit of being a limited partner is the limitation on personal liability. In exchange, however, the limited partner will not have the decision-making powers of a general partner.
(From https://www.delawareinc.com/blog/general-partnership-vs-limited-partnership/)

or employee of Success; never participated in its management; and neither respondent nor B&B ever represented Straub or Success. Straub did not testify at the disciplinary hearing.

Respondent's and Straub's ownership interests in, and their status as limited partners of USLR, thus, constituted personal financial interests. United States Realty Resources, Inc. (USRR) was USLR's general partner and held a one-percent financial interest in USLR. According to respondent, USRR was the controlling entity of USLR. Respondent served as USRR's president and, thus, made all decisions on behalf of USLR. Respondent and Straub were equal, fifty-percent stockholders in USLR's general partner, USRR, and comprised its board of directors.

Simply put, as president of the general partner of USLR, respondent wholly controlled USLR. Straub traveled to the United States four times a year, and respondent went to Germany twice a year. Although respondent consulted with Straub at least three times a week, "in the end," it was always respondent's "legal right to make [all decisions regarding USLR] because [he's] president of the general partner."

For all properties in which Success was an investor, all decisions were made by USLR, as the general partner of the subsidiaries, or by an entity

controlled by USLR. As stated previously, respondent was the decision maker for USLR, for the parent company, and for each of the subsidiary companies.

Respondent explained that, when USLR sought to purchase a property, it formed a subsidiary entity. Bornstein testified that those entities and projects became matters that B&B handled. He explained:

> It would – typically there would be a property that USLR was gonna acquire, it would create an entity for the purpose, typically – well, originally it was limited partnerships, more commonly now days it's a limited liability company, it would be the controlling entity for that – for that new I-D, whether it's gonna be the general partner or the manager or the managing member.
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> [USLR] typically would either own a hundred percent or 50 percent along with Success Treuhand, which is the German company that Mr. Berger's partner, Eckhart Straub, runs in Germany.
>
> [1T325.][2]

The USLR subsidiaries were operating real estate companies, which created "a whole world of legal work." Sometimes the properties had tenants, other times the subsidiaries constructed buildings on the properties. In other cases, mortgages were refinanced and, often, the properties were sold.

This matter focuses on USLR's ownership interest of at least fifty percent in the following five subsidiaries: Bank Buildings Investors, L.P., a/k/a Bank

[2] "1T" refers to the April 15, 2019 transcript of hearing.

Building Associates, L.P. (Bank Building Investors/Associates) (fifty percent);[3] Old Lumberyard Associates, L.P. (Old Lumberyard Associates) (ninety-five percent); 3920 Park Avenue, L.P. (fifty percent); Princeton Office Park, L.P. (68.833%); and Wedgewood Plaza, L.P. (fifty percent). The oldest of these entities, Wedgewood Plaza, L.P., was formed in 1989. The youngest, Bank Building Investors/Associates, was formed in 2001. The most recent amendment to any of the entities' partnership agreements, as well as the most recent filing for any of the entities, took place on May 17, 2017 (Old Lumberyard Associates).

USLR was the general partner of four of the five subsidiaries, the exception being 3920 Park Avenue, L.P., of which USLR was a limited partner. As a limited partner with a 49.5% ownership interest in USLR, respondent was an investor in each of the five subsidiaries, which also constituted a personal financial interest as to each entity. Respondent did not inform any of the subsidiaries that he had an interest in USLR, claiming that such a measure would amount to notifying himself. Straub/Success also was a limited partner with a 49.5% ownership interest in USLR. Success was an investor in Bank Building

[3] This entity is referred to as Bank Building Investors/Associates because although the limited partnership agreement identified the entity as Bank Building Investors, Limited Partnership, schedule A to the agreement identified the entity as Bank Building Associates, Limited Partnership.

Investors/Associates, Princeton Office Park, L.P., and Wedgewood Plaza, L.P., which also constituted a personal financial interest on the part of Straub as to each entity.

In addition to being a limited partner and the president of its general partner, respondent served as counsel to USLR. According to Bornstein, B&B's major clients were respondent and his various companies. In some instances, B&B hired outside counsel, as necessary, when B&B determined that an entity had "specialized legal needs," such as in certain bankruptcy and litigation matters.

Counts one through five of the formal ethics complaint charged respondent with having violated RPC 1.7(a)(2) by failing to obtain informed, written consent from both USLR, in which he had a personal financial interest, and the five subsidiaries, in which he also held a personal financial interest, regarding B&B's concurrent legal representation of USLR and the entities.[4]

Counts one through five also charged respondent with having violated RPC 1.8(a) by failing to obtain informed, written consent from both USLR and the subsidiaries regarding respondent's decision to enter into business

[4] To be precise, although count one alleged that respondent had failed to seek and obtain from USLR a waiver of the concurrent conflicts of interest from all five subsidiaries, counts two through five alleged that respondent had failed to seek and obtain waivers from four of the five entities. Respondent was not charged with having violated RPC 1.7(a)(2) in respect of Old Lumberyard Associates.

transactions with the entities, despite USLR's and the entities' status as respondent's and B&B's clients.[5]

Respondent vigorously disputed these conflict of interest charges. He testified that he did not conduct business with USLR or its subsidiaries. He claimed that he was not a partner with USLR or any subsidiary in buying a property. He conceded, however, that as an owner/investor of USLR, he had a financial interest "in each of the various" subsidiaries. He maintained that his interests and those of USLR and the entities were "always aligned, because if the subsidiary entity made money, USLR made money; and if USLR made money, [he] made money." If the businesses were not profitable, respondent shared in the loss. In short, respondent maintained that no financial arrangement between the parties was adverse.

In respect of conflict waivers, in general, Bornstein testified that it was not his practice to obtain waivers from either USLR or its subsidiaries when USLR or USLR and Success pursued another "deal." If there were a conflict between USLR and one of its subsidiaries, Bornstein speculated that a waiver would be obtained from the entity that controlled "each one of the entities from whom I'm seeking a waiver." In the case of USLR, Bornstein would seek a

[5] Again, to be precise, in counts two through five, respondent was not charged with having violated RPC 1.8(a) in respect of Old Lumberyard Associates.

waiver from the general partner, USRR, of which respondent was president. In the case of a subsidiary entity, he would seek a waiver from the same source, that is, USLR's general partner, USRR, whose president was respondent. In other words, Bornstein would be seeking a waiver from respondent for both sides of the transaction.

Count one is based on two alleged conflicts of interest vis-à-vis USLR. The parties agreed that respondent, who provided USLR with legal representation in multiple matters, comprising ninety percent of B&B's legal work, knowingly acted as both attorney and investor. These matters included sales and acquisitions; leases; summary dispossession actions; litigation; financing; tax appeals; and miscellaneous matters involving bankruptcy; insurance; and environmental issues.

According to count one, there existed a serious risk that respondent's legal representation of USLR would be materially limited by his personal interest in USLR. Yet, the complaint charged, respondent failed to seek or obtain informed, written consent from USLR to respondent's concurrent representation of both USLR and the five subsidiaries in which USLR was investing, thereby violating RPC 1.7(a).

Count one also alleged that respondent violated RPC 1.8(a) by entering into a business transaction with his client, USLR, to invest in Bank Building

Investors/Associates; Old Lumberyard Associates; 3920 Park Avenue, L.P.; Princeton Office Park, L.P.; and Wedgewood Plaza, L.P., without disclosing his interests as owner of USLR, as limited partner of USLR, and as an individual, and obtaining USLR's informed, written consent to the transaction. In this regard, the parties stipulated that respondent failed to advise USLR and its investors (Success and USRR), in writing, of the desirability of seeking the advice of independent counsel of USLR's choice in respect of the "business transaction" with Bank Building Investors/Associates; failed to give USLR a reasonable opportunity to seek that counsel; and failed to obtain from USLR informed, written consent to the essential terms of, and his role in, the transaction, including whether he was representing USLR in the acquisition of the property.

In respect of Old Lumberyard Associates; 3920 Park Avenue, L.P.; Princeton Office Park, L.P.; and Wedgewood Plaza, L.P., respondent did not stipulate to having failed to take the steps required when an attorney enters into a business transaction with a client. In respondent's answer to the complaint, however, he mostly admitted non-compliance with the RPC 1.8(a) disclosure and consent requirements because, he claimed, there was no business transaction between USLR and the five entities.

Respondent made a point of distinguishing between the formation of a subsidiary and doing business with a subsidiary. He stated: "I concede that the formation of the entity was a transaction, but not a transaction with the entity." He claimed that a potential conflict of interest would occur only if he started doing business with the entity that he had formed, and that he never did so.

Counts two through five of the complaint charged the same RPC violations as count one, albeit from the unique perspective of four of the five entities.

As a matter of convenience, respondent designated himself registered agent for all the entities. He asserted that lawyers who form entities typically name themselves registered agents. He never considered naming a "financially disinterested party" as the registered agent.

Respondent provided the entities with legal representation in multiple business transactions, "knowingly acting as both attorney and investor."

Respondent testified that he did not inform Bank Building Investors/Associates; Old Lumberyard Associates;[6] 3920 Park Avenue, L.P.; Princeton Office Park, L.P.;[7] or Wedgewood Plaza, L.P., in writing, of his

[6] Old Lumberyard was wholly owned by USLR. Respondent acknowledged that 57 Elm Street owned five percent of Old Lumberyard. However, USLR owned 57 Elm Street.

[7] In respect of Princeton Office Park, L.P., which had owners outside USLR, USRR, and the Straub sphere, namely Henny von der Tann (13.333%); Michael von der Tan (2.5%); Jan-Kirk Auffermann (0.833%); and limited partner, A-Team Assoc., L.P. (2%); respondent

personal interest in USLR; did not inform any of them that they had a right to seek independent counsel of their choice; did not give them a reasonable time within which to seek that counsel; and did not notify them whose interests he was representing in the transactions. In short, respondent did not believe that either RPC 1.7 or RPC 1.8 applied to the investments and entities subject to the complaint.

It was a foregone conclusion that B&B would be counsel for the five entities. Respondent and B&B represented all five entities "at one time or another," yet did not obtain any waivers from USLR, USRR, or the entities.[8] Respondent and the entities did not enter into retainer agreements, although he billed the entities based on "an estimate of time, an estimate of result."[9]

As to count two, the parties stipulated that USLR and Success each were a fifty percent investor in Bank Building Investors/Associates. As a limited partner with a 49.5% ownership interest in USLR, respondent was an investor in Bank Building Investors/Associates. His status as a limited partner in USLR implicated personal financial interests.

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failed to inform them of his interest in USLR prior to the purchase of Princeton Office Park.

[8] During his February 13, 2018 OAE interview, respondent stated that, at one time, there were 200 investors through Straub and "close to a hundred different entities."

[9] Although not charged by the complaint, respondent's failure to enter into fee agreements with any of the entities, at least in the first instance, arguably violated RPC 1.5(b) (failure to communicate, in writing, the basis or rate of the fee).

In respect of Bank Building Investors/Associates, USLR and Success formed an entity to buy a building in which Bank of America was the main tenant. Once the entity was formed, respondent did no further business with that client, although he served as counsel to Bank Building Investors/Associates. Indeed, B&B handled thirteen legal matters for Bank Building Investors/Associates, including real estate acquisitions.

At some point, B&B determined to file for bankruptcy on behalf of Bank Building Investors/Associates. Although Bornstein testified that Norris McLaughlin, P.A. had handled the matter, the bankruptcy case appeared on the list of matters in which B&B represented USLR-related entities.

According to count two, there existed a serious risk that respondent's legal representation of Bank Building Investors/Associates would be materially limited by his financial interest in USLR. Yet, respondent failed to obtain from Bank Building Investors/Associates, USLR, and Success informed, written consent to the dual representation, after full disclosure and consultation about the advantages and risks. The complaint alleged that he, thus, violated RPC 1.7(a).

Count two also alleged that respondent represented Bank Building Investors/Associates in multiple business transactions, knowingly acting as both attorney and investor. Yet, respondent also failed to advise Bank Building

Investors/Associates, in writing, of the desirability of seeking independent legal counsel of its choice. Consequently, the OAE charged respondent with having violated RPC 1.8(a) by entering into a business transaction with his client, Bank Building Investors/Associates, without disclosing his interests as owner of USLR, as limited partner of USLR, and as an individual and obtaining Bank Building Investors/Associates' informed, written consent to the transaction.

Regarding count three, as of March 6, 1998, USLR was a limited partner with a fifty percent partnership interest in 3920 Park Avenue, L.P. The remaining fifty percent was owned by the general partner, 3920 Park Avenue Assoc., GP, L.P.

The parties stipulated that, as a limited partner with a 49.5% ownership interest in USLR, respondent was an investor in 3920 Park Avenue, L.P. His status as a limited partner and 49.5% ownership interest in USLR constituted personal financial interests. Further, he had an indirect financial interest in 3920 Park Avenue Associates, through USLR (as a limited partner) and USRR (as a shareholder).

B&B formed 3920 Park Avenue, L.P. and represented the entity in seventeen matters, including transactions between the entity and third parties, not between the entity and respondent.[10] Respondent explained:

[10] Eventually, USLR purchased Success's interest in the entity and became sole owner. In

> We represented 3920 Park Avenue when it was doing business with third parties, I represented the interests of 3920 Park Avenue, but never in an instance in which I was doing business with the entity.
>
> [2T227-8 to 12.][11]

According to the complaint, there existed a serious risk that respondent's legal representation of 3920 Park Avenue, L.P. would be materially limited by his financial interest in USLR. Yet, respondent failed to obtain from 3920 Park Avenue, L.P., or its investors, USLR, and 3920 Park Avenue Assoc., GP, L.P., informed, written consent to respondent's representation of the parties, after full disclosure and consultation. The complaint alleged that he, thus, violated RPC 1.7(a)(2).

Respondent represented 3920 Park Avenue, L.P. in multiple transactions and matters, knowingly acting as both attorney and investor. Respondent had an indirect financial interest in 3920 Park Avenue, L.P. through both USLR (as limited partner) and USRR (as shareholder). Yet, respondent failed to advise 3920 Park Avenue L.P., in writing, of the desirability of seeking independent

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April 2017, USLR had a 95% ownership interest in Old Lumberyard Associates with the remaining five percent held by 57 Elm Street Holdings, LLC, which was 100% "indirectly owned" by USRR. Thus, respondent, who held a 49.5% ownership interest in USLR and was a limited partner, also was an investor in Old Lumberyard Associates. His ownership interest and limited partner status in USLR constituted personal financial interests. Stated another way, respondent had "an indirect financial interest in Old Lumberyard Associates . . . through both USLR (as limited partner) and USRR (as shareholder)."

[11] "2T" refers to the April 16, 2019 transcript of hearing.

legal counsel of its choice. Thus, the complaint charged respondent with having violated RPC 1.8(a) by entering into a business transaction with his client, 3920 Park Avenue, L.P., without disclosing his interests as owner of USLR, as limited partner of USLR, and as an individual and obtaining from 3920 Park Avenue, L.P. informed, written consent to the transaction.

At some point, B&B determined to file for bankruptcy on behalf of 3920 Park Avenue, L.P. It appears that, as Bornstein testified, Norris McLaughlin handled the matter, because the bankruptcy case does not appear on the list of matters in which B&B represented USLR-related entities.

Regarding count four, the parties stipulated that, as of April 26, 1991, USLR was a 50.167% investor in Princeton Office Park, L.P. The remaining 49.833% was owned by the following general partners, as follows: Success (31.167%); Henny von der Tann (13.333%); Michael von der Tann (2.5%); Jan-Kirk Auffermann (.833%); and Limited Partner A-Team Assoc., L.P. (2%).

As a limited partner with a 49.5% ownership interest in USLR, respondent was an investor in Princeton Office Park, L.P. His status as a limited partner and his 49.5% ownership interest in USLR constituted personal financial interests. Further, he had an indirect financial interest in Princeton Office Park, L.P., through USLR (as a limited partner) and USRR (as a shareholder). Finally, A-Team Associates was a limited partnership associated with respondent.

The complaint alleged that there existed a serious risk that respondent's legal representation of Princeton Office Park, L.P. would be materially limited by his personal financial interest in USLR. Respondent admitted that neither Princeton Office Park, L.P. nor its investors, USLR; Success; the von der Tanns; Auffermann; and A-Team Associates gave informed, written consent to the dual representation, after full disclosure and consultation.[12]

The complaint charged respondent with having violated RPC 1.7(a) by failing to seek or obtain informed, written consent from Princeton Office Park, L.P. to the dual representation of USLR and Princeton Office Park, L.P. Specifically, respondent represented Princeton Office Park, L.P. in multiple business transactions and matters, knowingly acting as both attorney and investor. Yet, he failed to advise Princeton Office Park, L.P., in writing, of the desirability of seeking the advice of independent counsel of its choice.

The complaint also charged respondent with having violated RPC 1.8(a) by entering into a business transaction with a client without disclosing his interests as owner of USLR, as limited partner of USLR, and as an individual and obtaining from Princeton Office Park, L.P. informed, written consent to entering into the business transaction.

[12] According to respondent, the German investors had no decision-making authority. They simply advanced funds in exchange for a percentage of a return.

In respect of Princeton Office Park, L.P., which was originally owned by USLR, Success, the von der Tanns, Auffermann, and A-Team Associates, respondent did not notify the individuals of his interest in USLR, and he did not secure their informed consent prior to purchasing the real estate. He claimed that his interest was clear in the partnership agreement. He also prepared term sheets, which described the deal for the investors and, thus, contained the essential terms of the transactions.

Respondent described a matter involving Princeton Office Park, L.P. He testified that the entity was formed to purchase a Lawrenceville property, which was leased to a series of tenants. Thereafter, the parcel was rezoned for commercial use and sold off in pieces. The entity eventually filed for bankruptcy, as the holder of a tax lien certificate instituted a foreclosure action against the property. The matter was heavily litigated through the federal and state courts, including the Supreme Court of New Jersey. B&B represented Princeton Office Park, L.P. throughout the process.

In the end, Princeton Office Park, L.P. did not have to pay $2.2 million in outstanding real estate taxes. Thus, USLR, a major partner in Princeton Office Park, L.P. prevailed, and respondent "profited" because he was a major owner of USLR. Thus, "everybody's" interests were "aligned," and "the ultimate

success in the lawsuit – through a bankruptcy, was beneficial to the subsidiary entity, to [USLR] and to myself."

In another matter, Princeton Office Park, L.P., USLR, USRR, and respondent were co-defendants in a lawsuit.

As to count five, the parties stipulated that USLR was a fifty-percent investor in Wedgewood Plaza, L.P. The remaining fifty-percent investor was Success.

As a limited partner with a 49.5% ownership interest in USLR, respondent was an investor in Wedgewood Plaza. His status as a limited partner and 49.5% ownership interest in USLR constituted personal financial interests. Further, he had an indirect financial interest in Wedgewood Plaza, through USLR (as a limited partner) and USRR (as a shareholder).

Respondent testified that B&B represented Wedgewood Plaza in at least fifteen matters, including transactions between the entity and third parties. For example, USLR and Success Treuhand purchased a building, leased it to a tenant "for many years," and sold the building for $16 or $17 million, which benefited Wedgewood Plaza, L.P., USLR, and respondent. In another matter, respondent and Wedgewood Plaza, L.P. were co-defendants in litigation instituted against them by Lenox Hill Investors, LLC.

According to the complaint, there existed a serious risk that respondent's legal representation of Wedgewood Plaza, L.P. would be materially limited by respondent's personal financial interest in USLR. Yet, respondent admitted that neither Wedgewood Plaza, L.P., nor its investors, USLR and Success Treuhand, gave informed, written consent to the dual representation, after full disclosure and consultation. Thus, the complaint charged respondent with having violated RPC 1.7(a)(2) by failing to seek or obtain informed, written consent from Wedgewood Plaza, L.P. to the dual representation of USLR and Wedgewood Plaza, L.P.

The complaint also charged respondent with having violated RPC 1.8(a) by entering into a business transaction with a client without disclosing his interests (as owner of USLR, as limited partner of USLR, and as an individual) and obtaining informed, written consent to enter into the business transaction.

Count six of the ethics complaint charged respondent with having violated RPC 1.15(a)[13] by failing to safeguard Jade Land Co., LLC's $200,000 deposit in a real estate transaction; RPC 1.15(a) and (c) by commingling Jade's funds with his personal funds when he transferred Jade's $200,000 to the RMA account; RPC 1.15(a) by negligently misappropriating funds belonging to

[13] The complaint cited RPC 1.5(a) (unreasonable fee), which appears to be a mistake. The more applicable Rule is RPC 1.15(a).

RE/Max Neighborhood; and clients named Ricciardi; Fullerton; Baykowski; and Chang; RPC 1.15(a) by negligently misappropriating the buyer's deposit in the Angela Oddo residential real estate transaction; and RPC 5.3(a) and (c) by failing to make reasonable efforts to ensure that Soares's conduct was compatible with his professional obligations, particularly his duty to adhere to R. 1:21-6 and the Rules of Professional Conduct, and by failing to supervise Soares whose conduct would have violated the RPCs if respondent had engaged in it.

"RMA" referred to Realty Management, which was a management company that performed the day-to-day management of the properties owned by the subsidiaries of USLR. Respondent and his wife owned the RMA account, which also was referred to as the "agency account." The RMA account was a separate PNC account, into which the funds of all properties managed by RMA were deposited and from which all payments were disbursed.[14] In other words, all financial transactions were handled through the RMA account and, thus, all funds "went into one pot."

When expenses were paid, "the money freely moved between entities," which were assigned individual account numbers. "USLR acted like a central

[14] Straub was "fully familiar with the use of the RMA agency account." All partners in the various entities gave permission for all funds to be located in one place.

bank in terms of taking money from the entities and paying money to the entities." Soares maintained B&B's ledger card for the RMA account.

Regarding the $200,000 deposit, real estate broker Ray Rice owned Jade, the potential joint buyer in the purchase of the "Old Lumberyard," a Morristown, New Jersey property owned by Old Lumberyard Associates. On behalf of Old Lumberyard Associates, respondent agreed to sell the real estate to Jade. Rice had a lawyer, and Bornstein handled the matter on behalf of Old Lumberyard Associates.

As to the Jade transaction, respondent testified that he and Rice had done business together for twenty-five years. They referred each other to clients, and respondent had purchased and sold properties through Rice.

On March 1, 2017, Jade issued check number 1018, in the amount of $200,000, payable to the "B&B Attorney Escrow Account." On March 8, 2017, the check was deposited in the B&B ATA, which represented the opening transaction on the Old Lumberyard Associates, L.P. ledger card.

Thereafter, Rice had difficulty procuring investors to commit to the transaction. On April 7, 2017, respondent and Rice verbally agreed to extend the contract deadline to afford Rice the opportunity to obtain the investors' commitment. In consideration of the extension, Rice agreed to release the $200,000 from B&B's ATA on the condition that the funds would be returned

to Rice if the transaction did not proceed to closing. Although respondent and Rice's agreement was not reduced to writing, they had engaged in similar arrangements in the past.

At respondent's direction, Soares electronically transferred the $200,000 deposit from the ATA to the RMA account on the following dates and in the following amounts: April 10, 2017 ($20,000); April 13, 2017 ($25,000); April 18, 2017 ($75,000); and April 20, 2017 ($80,000).[15] The transfers reduced the Old Lumberyard ATA ledger balance to zero.

Soares identified the client ledger card for Old Lumberyard Associates, which she assumed she had created on March 8, 2017, when she received Jade's $200,000 deposit. Although Soares understood that Rice had permitted respondent to borrow the money, she could not recall the reason for the four transfers or why those particular dates and amounts were chosen, stating "I just did what I was told."

[15] Callery's testimony regarding respondent's explanation of the Old Lumberyard deal was consistent with respondent's, including Rice's agreement to allow respondent to remove the funds from the trust account so long as they were returned if Rice could not find investors. Callery testified that, "in a way you could say Mr. Berger was borrowing that money from Jade Land deal." Yet, despite respondent's failure to also obtain permission from the seller to borrow the funds, the OAE did not charge him with knowing misappropriation of the monies.

On Friday, April 21, 2017,[16] Rice called respondent, told him that the Old Lumberyard transaction would not take place, and requested the return of the $200,000 deposit. Instead of replenishing the ATA with $200,000, respondent, who "knew we had some money in the trust account, because we always have some change sitting around from some transaction or another," called Soares, notified her of Rice's request, and asked her how much money was required to cover a $200,000 ATA check to Rice. Soares checked the ATA balance via the PNC online banking system and determined that the total account balance was "our money."[17] Because Soares believed that all ATA funds belonged to either RMA or the entities, she did not review any ledger cards.

Soares subtracted the current ATA balance from $200,000, and estimated that $157,000 was required to cover a $200,000 check to Rice, although, ultimately, "we needed a little bit more than that." On respondent's authorization, Soares transferred $157,000 from the RMA account to the ATA.

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[16] Although Callery testified, and the parties stipulated, that Soares was vacationing in Portugal at the time, Soares' testimony wavered between issuing the check and then leaving for vacation and "being away" "when the whole thing at the bank happened."

[17] Regarding respondent's and Soares' use of the phrase "our money," Callery testified that she understood it to mean the funds belonged to one of the entities in which respondent had a business interest, such as Old Lumberyard Associates, RMA, or Wedgewood Plaza, L.P. Yet, she testified, the funds did not belong "entirely" to respondent and, thus, he did not have permission to move them around, as the ATA held funds for other client matters and transactions unrelated to USLR and the entities. For example, respondent held no interest in the funds of RE/MAX Neighborhood, Fullerton, Baykowski, and Chang; the Oddo deposit; or the Ricciardi $50, all of which are discussed below.

Respondent did not "routinely" review client ledger cards, and he did not review any ledger prior to authorizing the $157,000 transfer. Rather, he relied on Soares to maintain the client ledger cards and, thus, accepted her claim that $157,000 from the RMA account would be sufficient to cover the $200,000 disbursement.

On April 21, 2017, Soares issued, and respondent signed, ATA check number 263, in the amount of $200,000, payable to Jade Land Co., LLC, which was negotiated that day and overdrew the ATA by $6,682.03.

When Rice cashed the $200,000 check, B&B was required to hold inviolate in the ATA the following funds in the following client matters:

Ledger Name	**Ledger ID#**	**Required ATA balance 4/21/2017**
Princeton Office Park	3250-0635	$6,300.00
Realty Management	3250-0992	$11,140.47
Re/Max Neighborhood	3250-1218	$2,827.50
Angela Oddo	3250-1092	$16,000.00
Ricciardi – uncleared check #187	3250-1195	$50.00
TOTAL		$36,317.97

[C6¶131;A6¶131;S¶131;1T148-1T158;Ex.P14;Ex.P19;Ex.P24;Ex.P57.][18]

[18] "C6" refers to count six of the formal ethics complaint, dated July 17, 2018.

Soares failed to account for these entrusted funds when she calculated the $157,000 figure.

On Monday, April 24, 2017, Soares, who reviewed the B&B bank accounts on a daily basis, discovered the overdraft. She called respondent, "freaking out." He told her to move more funds from the RMA account to the ATA and "fix it." Thus, on that date, with respondent's approval, Soares made two cash deposits with RMA funds – one for $6,702.67 and another for $20 – increasing the ATA balance to $40.64.[19] Soares credited the $6,722.67 – an amount greater than the overdraft – to the Old Lumberyard Associates ledger. Yet, the deposit did not replenish all of the funds that had been invaded, as the $200,000 check had reduced the Old Lumberyard Associates' ledger card balance to -$43,000.

On April 28, 2017, Soares transferred funds, via journal entries from "various ledgers," to the Old Lumberyard Associates ledger in an attempt to bring Old Lumberyard into a positive balance. Specifically, she made a bookkeeping adjustment to the Princeton Office Park, L.P. ledger card by transferring $6,300 to the RMA ledger.[20] This increased the RMA ledger balance

[19] The $20 represented payment for the overdraft charge.

[20] Soares testified that Princeton Office Park, L.P. was one of respondent's entities and, thus, its money was his money, just as RMA's money was respondent's money.

to $33,440.47. On that same date, she entered a general journal transaction in the amount of $33,440.47 on the RMA ledger and transferred the balance to the Old Lumber Yard ledger card, thus, reducing the negative ledger balance to -$2,836.86.

On April 30, 2017, the unreconciled ATA bank balance was $40.64, but the reconciled bank balance was -$9.36. Thus, the ATA was out of trust. As of April 30, 2017, the ATA balance should have been at least $18,877.50, representing Re/Max's $2,827.50; Oddo's $16,000; and Ricciardi's $50.

By May 30, 2017, respondent had deposited in the ATA approximately $82,600, $41,000 of which belonged to three different clients by the names of Fullerton, Chang, and Baykowski. By this point, the ATA balance should have been $101,477.50, but the running balance was only $41,040.64.

Gradually, Soares determined the causes of the ATA imbalances. B&B attorney Joseph Sergeant represented Angela Oddo in the sale of her Montville, New Jersey home. On April 7, 2017 the buyer's $16,000 check was deposited in the ATA, but Soares mistakenly posted the funds to the RMA ledger instead of the Oddo ledger.

On May 26, 2017, the Oddo closing took place. At the closing, Sergeant presented Oddo with ATA check number 264, dated May 30, 2017, in the amount of $16,000, which Soares had issued at Sergeant's direction, along with

a check issued by the title company representing payment of the net settlement proceeds.

Although the parties stipulated that respondent issued the $16,000 check, he was not aware of either the Oddo matter or the fact that the ATA was holding the buyer's $16,000 deposit. Specifically, respondent testified that, when Soares presented the check to him for his signature, he asked her "what's this about?" She explained that it was for one of Sergeant's real estate closings. Respondent asked whether the money was in the ATA, Soares answered yes, so he signed the check and gave it back to her. Respondent admitted that he did not examine the Oddo ledger card. Rather, his practice was to ask Soares whether the money was in the ATA. Her answer was good enough for him.

When Soares issued the $16,000 ATA check to Oddo, on May 30, 2017, the Oddo ledger card had a zero balance due to Soares' mistake in recording the buyer's deposit on the RMA ledger. Thus, when Oddo cashed the check, on June 1, 2017, the payment invaded the funds of RE/MAX Neighborhood, Oddo (again), Ricciardi, Fullerton, Baykowski, and Chang. Respondent did not have a financial interest in any of these clients.

When Soares reviewed the May 2017 ATA bank statement and performed the reconciliation, she determined that the Oddo ledger was now $16,000 short.

She informed respondent about the shortage, and he told her to "fix it." Callery described the shortage as a "bookkeeping mistake."

On June 6, 2017, Soares corrected the error by transferring $16,000 from the RMA ledger to the Oddo ledger. She testified that, rather than a ledger adjustment, she "moved real money" from RMA into the B&B ATA under Oddo's ledger card.

In determining that $157,000 had been enough to cover the $200,000 check to Jade, Soares also neglected to take into account the $2,827.50 for Re/Max Neighborhood, which also was in the ATA. When Soares discovered the mistake and told respondent, he directed her to "fix it." On June 12, 2017, in another attempt to zero out the Old Lumberyard Associates ledger card, Soares transferred $2,827.50 from the RMA account into the ATA and credited the Old Lumberyard Associates ledger card, which was now -$9.36 short.[21]

The Old Lumberyard Associates debit balance remained until December 29, 2017. According to respondent, when he learned of the continuing -$9.36 negative balance, he "screamed" at Soares about "crapping around with this thing." On that date, Soares voided ATA check number 187, in the amount of $50, which was due and payable to B&B in the Ricciardi matter. She transferred

[21] It is not clear why Soares transferred the RE/MAX funds to the Old Lumberyard Associates ledger. She testified that, in September 2017, she paid the $2,827.50 to the proper party.

"the funds" from the ATA to the ABA and adjusted the Old Lumberyard ledger to reflect a $9.36 credit, resulting in a zero balance. She then adjusted the Ricciardi ledger to reflect the voiding of check number 187, a $40.64 debit to B&B, and a journal entry transferring $9.36 to Old Lumberyard. At that point, no ledger card had a negative balance.

Regarding the $50 in funds designated for B&B real estate client Ricciardi, Soares testified that, in anticipation of a closing, Sergeant had given her a list of checks to prepare, including a $50 check to B&B, which she surmised was "some kind of fee." Soares presumably issued the check, but she assumed that Sergeant did not give it to her, following the closing, as it remained "uncleared". When she told respondent, he said to put the difference in Old Lumberyard.

Respondent was the sole authorized signatory on B&B's ATA and ABA. He conceded that he was responsible for the recordkeeping. However, he had delegated his bookkeeping obligations to Soares.

Soares testified that respondent was her supervisor, and she worked for no other lawyer. Although Soares' primary job title was accounts payable manager, she had "lots of hats."

Soares was the firm's bookkeeper and the bookkeeper for RMA, USLR, and all "affiliated real estate operating entities," which are identified and

described in the facts underlying counts one through five of the complaint. Her bookkeeping duties included the preparation of records required by R. 1:21-6.

Soares testified that, when she first started working for B&B, she had been hired by Louis Mont, a non-lawyer who was the chief financial officer of USLR. Mont was responsible for the ATA and, although he taught Soares "certain things," such as how to reconcile bank statements and how to create QuickBooks client ledgers, she was not trained in the attorney recordkeeping Rules. When Mont left the firm in 2007, Soares "just kept doing what [she] was taught."

In performing her duties, Soares used QuickBooks for the ATA, including the creation and maintenance of client ledger cards, and used Yardi Genesis for the accounting department. Soares did not believe that respondent had used her computer to access QuickBooks. Indeed, she was not certain that he knew how to use a computer.

For his part, respondent stated that he was "[n]ot terribly" familiar with QuickBooks, which he did not use, although it was a valuable resource for the office. Instead, he relied on Soares to access QuickBooks data, such as client ledger cards, the check register, and various reports.

In respect of the ATA, Soares deposited checks in the account and issued checks against the account, which respondent signed. She explained that, when a check had to be deposited in the ATA, for a real estate closing, for example,

the attorney would give her the check and a memo that identified pertinent information – such as the client name and the nature of the payment – and would instruct her to deposit the check in the ATA.

After an attorney gave Soares an initial check to deposit in a matter, she would create a ledger card. She conceded, however, that the card was not always created simultaneous to the deposit. Sometimes, she would wait until she performed the monthly reconciliation.

Soares testified that B&B received its monthly bank statements during the first week of the month. She routinely showed those to respondent. Although he did not review ledger cards, he would see the "reports behind the bank statements," which reflected receipts and disbursements.

Regarding the negligent misappropriation charge, respondent testified that he had done nothing negligently, as he did not fail to hold and safeguard Jade's $200,000 separate from his personal funds; rather, Rice had agreed that the money could be moved from the ATA account to the RMA account. Respondent did not understand how a three-way reconciliation would have enabled him to detect Soares's errors. To the contrary, he denied that it would have alerted him to the mistakes.

Respondent also did not understand why an examination of ledger cards would have assisted him in determining that the Oddo funds had been credited

to the wrong matter. Further, he stated that he was "not sure that makes a difference" that the funds of Ricciardi, Bullock, Baykowski, Chang, and Oddo also were invaded.

Respondent acknowledged that he had been subject to a random audit in 2004. He claimed that, at the time, the firm was performing two-way reconciliations, "and nobody said anything to the contrary."

In Callery's view, respondent did not have a "mastery" of the bookkeeping records. Rather, he stated that Soares handled all the bookkeeping and was the "go to" person in that regard. She had "almost complete responsibility for it."

Callery's concern with Soares' role was that respondent did not check "a lot of her work." Further, Soares made unilateral decisions to adjust the books and told respondent after the fact, as in the case of the adjustments to the Princeton Office Park, L.P. and RMA general journal entries. Also, during the investigation, respondent stated, and Soares confirmed, that he very rarely looked at the client ledger cards.

Regarding the failure to supervise charge, respondent testified that Mont, who handled all financial affairs "for the company," as well as the trust account, had hired Soares and supervised her. Further, when respondent questioned her over the years, her usual answer was "well, that's the way Lou Mont did it for seven years."

Respondent testified that, in respect of RPC 5.3(c), he did not ratify Soares's conduct; he did not know of the conduct and fail to take reasonable remedial action; and he did not fail to make a reasonable investigation of circumstances that would disclose past instances on conduct incompatible with the professional obligations of a lawyer. Rather, he described Soares as the "perfect employee," who, among other things, is smart and as "careful as can be" and asks questions when she has them. He trusted her one hundred percent.

Regarding count seven of the complaint, Callery testified that the $6,682.03 ATA overdraft constituted a failure to safeguard funds, in violation of RPC 1.15(a). She also identified a number of specific recordkeeping violations, including the electronic transfer of funds from the ATA without proper written authorization, contrary to R. 1:21-6(c)(1)(A). Instead of comparing book and bank balances to client ledger balances each month, as required by R. 1:21-6(c)(1)(H), respondent simply compared the book balance to the bank balance, without comparing those balances to the client ledger trust balances. In addition, as respondent admitted, from April 21 to December 29, 2017, the Old Lumberyard client ledger card had a debit balance, contrary to R. 1:21-6(d).

Further, B&B did not maintain individual ledger cards for each client, contrary to R. 1:21-6(c)(1)(B). For example, ATA deposits were made for B&B

associate Gregory Cannon's clients, TSE Corporation and the Borough of Allentown, but neither had a ledger card. Instead, the deposits were recorded on the B&B firm ledger card, which is appropriate only for tracking bank fees maintained in the ATA.

Legal fees were deposited in the ATA, contrary to R. 1:21-6(a)(2). For example, the legal fees owed directly to Cannon, who was authorized to have his own clients and to use the B&B ATA, were special fiduciary funds, which may not be maintained in the ATA (R. 1:21-6(a)(1). Rather, Cannon's legal fees should have been disbursed from the ABA.

Finally, as respondent conceded, deposit slips and wire confirmations were not maintained for seven years, contrary to R. 1:21-6(c)(1)(A). Specifically, there were no deposit slips for the wire transfers, although respondent eventually produced the wire confirmations. Moreover, ordinary deposits were scanned and, thus, there were no deposit slips.

Regarding the TSE and Allentown deposits, Soares explained that the funds represented legal fees that Cannon had charged to those clients. She claimed that, if she had created a ledger card for the TSE and Allentown matters, she would have lost track of disbursements due to Cannon. Thus, she tracked the payments through the ATA "because it was for him and then it was going out to him."

Soares testified about the changes made as the result of the OAE audit of the firm's books and records. As of January 1, 2017, Soares testified, B&B policy required the deposit of attorney fees in the ABA. Soares became "a lot more careful." Specifically, she began recording deposits as they were made. Previously, she sometimes failed to record a deposit until after she had noticed it while reviewing the monthly bank statement. She also began performing three-way reconciliations, after having reconciled the ATA improperly for the previous eighteen years.

Prior to the audit, Soares deposited all checks in the ATA by scanning them to the bank. In respect of checks of $50,000 or more, Soares now takes them to the bank for deposit. She continues to scan deposits under $50,000, but she also makes a copy, which she attaches to the memo with deposit instructions. Soares still does not use deposit slips for scanned checks. She testified that the scanned check, which is voided after deposit, serves as the deposit slip.

In respect of electronic transfers from the ATA to the RMA account, Soares testified that, prior to the audit, she would do so on respondent's verbal instruction. Subsequent to the audit, respondent began to provide her with signed, written instructions. This procedure also was followed in respect of non-USLR matters not involving the RMA account.

In count eight, based on the claim that Bornstein was a B&B salaried employee, who did not qualify as a partner within the meaning of RPC 7.5(d), the complaint charged respondent with having violated RPC 7.1(a)(1) (false communication about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement); RPC 7.5(d) (permitting lawyers to state or imply that they practice in a partnership only if the persons designated in the law firm name and the principal members of the firm share in the responsibility and liability for the firm's performance of legal services); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Bornstein testified that respondent hired him as a lawyer when the firm was known as Lawrence S. Berger, Esquire, P.A. (Berger, P.A.). Bornstein believed that the firm became Berger and Bornstein, P.A., in the mid-1980s.

Bornstein did not have an equity, ownership, or financial interest in either Berger, P.A. or B&B. He did not share in the profits and bore no responsibility for B&B's liabilities. Bornstein testified that he had no responsibility for the management of B&B; no signatory authority over the ATA; and no bookkeeping responsibilities. He did not generate a client base.

In respect of whether Bornstein, whose name was included in that of B&B, was a partner, he testified that limited liability companies do not have partners; rather, they have members. Thus, he was not respondent's partner.

In mitigation, the parties stipulated that, as of April 5, 2019, respondent was seventy-seven years old and had been practicing law in New Jersey for fifty-four years with an unblemished disciplinary record. He cooperated with the OAE in its investigation, and all "submissions" were timely.

* * *

In respect of counts one through five, the OAE argued, in its written summation to the special master, that respondent had a personal financial interest in both USLR and the five subsidiaries. Further, he provided legal services to USLR and all five subsidiaries. Thus, there was "a substantial risk that [r]espondent's representation of USLR would be materially limited by his concurrent obligations to zealously and with absolute loyalty advocate for the interests of the five other" subsidiaries. For example, respondent determined that USLR should invest in three of the five subsidiaries – namely, Bank Building Associates/Investors; 3920 Park Avenue Associates; and Princeton Office Park, L.P. – which he subsequently placed in bankruptcy. Respondent failed to comply with the waiver provisions set forth in RPC 1.7(b)(1)-(4), and, thus, engaged in an impermissible conflict of interest, vis-à-vis USLR, under RPC 1.7(a)(2).

The OAE argued the inverse in respect of the five entities, given respondent's concurrent obligation to represent USLR with zealous and absolute loyalty. By way of example, respondent placed Bank Building

Investors/Associates; 3920 Park Avenue, L.P.; and Princeton Office Park, L.P. in bankruptcy. He also initiated litigation in which both USLR and Bank Building Investors/Associates were plaintiffs; made multiple litigation decisions in behalf of 3920 Park Avenue, L.P.; and represented USLR and Wedgewood Plaza, L.P. as defendants in the same litigation. Respondent failed to comply with the waiver provisions set forth in RPC 1.7(b)(1)-(4), and, thus, engaged in an impermissible conflict of interest, vis-à-vis the five entities, under RPC 1.7(a)(2).

The OAE also argued that respondent engaged in impermissible business transactions with USLR and the five entities, in violation of RPC 1.8(a), by failing to comply with the waiver provisions set forth in subsections (1)-(3) of the Rule. Specifically, respondent violated RPC 1.8(a), vis-à-vis his client USLR, by "engag[ing] in multiple business transactions with USLR," including his and USLR's "joint investments" in the five entities, without obtaining the necessary waivers.

The OAE argued the inverse in respect of the five entities, also his clients. Specifically, "[a]cting through USLR, [r]espondent engaged in a business transaction" with each of the entities, by virtue of their respective purchases of properties that bore the entities' names, without obtaining the necessary waivers.

Regarding count six, the OAE asserted that respondent was continuously out of trust from April 21 through June 1, 2017. On various occasions throughout that period, he violated RPC 1.15(a) by negligently misappropriating client funds belonging to Princeton Office Park, L.P. ($6,300); RMA ($11,140.47); RE/MAX Neighborhood ($2,827.50); the Angela Oddo real estate transaction ($16,000); Ricciardi ($50); Fullerton; Baykowski; and Chang.

In addition, respondent violated RPC 1.15(a) by failing to keep Jade's $200,000 deposit separate from his own property. Specifically, instead of maintaining the funds in the ATA, he commingled them with his personal funds, by transferring the monies to the RMA account and using them. Respondent also failed to safeguard Jade's $200,000, as established by the $6,682.03 overdraft resulting from the bank's payment of the $200,000 ATA check issued to Jade after Rice had requested a refund of the deposit.

Finally, regarding count six, the OAE argued that respondent failed to supervise Soares, B&B's bookkeeper, in violation of RPC 5.3(a) and (c). Specifically, respondent, who had "little grasp of his ATA recordkeeping," failed to ensure that Soares performed monthly three-way reconciliations and accurately monitored the ATA so that no client funds were invaded.

The OAE argued that it had met its burden of establishing, by clear and convincing evidence, the recordkeeping violations alleged in count seven.

Finally, in respect of count eight, the OAE argued that respondent had violated RPC 7.1; RPC 7.5(d); and RPC 8.4(c) by designating the law firm Berger & Bornstein, LLC, thus communicating that Bornstein was a partner when, to the contrary, he was not a partner and had no financial interest in the firm or any responsibility for its management, bookkeeping, accounts, or liabilities. The OAE argued that the RPCs are not limited to law firms that choose to do business as partnerships. Rather, the Rules are designed to prohibit the use of firm names that include individuals who do not bear "responsibility and liability for the firm's performance of legal services." Thus, the use of Bornstein's name in the name of the firm "was neither accurate nor descriptive of the firm."

For the totality of respondent's RPC violations, the OAE recommended the imposition of a reprimand.

In respondent's brief to us, he argued that the special master failed to explain the claimed significant risk that his representation of USLR and the entities would be materially limited by his responsibilities to another client, a former client, or a third person or by a personal interest of respondent. He rejected the special master's reliance on respondent's decision to run three entities through bankruptcy as proof that he violated RPC 1.7. Indeed, to the contrary, respondent argued that the bankruptcies benefited the projects, the

entities, and USLR, because the bankruptcy actions preserved those entities' "sole asset from loss through foreclosure." Further, according to respondent, the interests of respondent, USLR, and the five entities were aligned and, thus, there was no significant risk that his representation of the entities would be limited, in any respect, by his ownership interest in USLR.

In respect of RPC 1.8(a), respondent argued that he "never transacted business with USLR." Specifically, following USLR's formation, the entity purchased real estate in the United States, either directly or through subsidiary companies, which were formed for the purpose of buying particular properties. In respect of these purchases, respondent represented USLR in the purchases and in the formation of the subsidiary entities. In these transactions, he acted as a lawyer, just as any lawyer representing a real estate client. His mere possession of an ownership interest in USLR did not constitute doing business with the client, in violation of RPC 1.8.

Respondent also disputed that he engaged in a business transaction with USLR in the form of a "joint investment" in each of the entities. Rather, USLR simply made an investment in those entities. In short, respondent did not enter into a business transaction with a client. He did not enter into a business transaction with USLR in which both he and USLR invested monies in any entity.

Similarly, respondent argued that he did not enter into a business transaction with any of the entities. USLR did not enter into a business transaction with each entity to purchase the property. Rather, USLR decided to acquire the property; formed an entity for the purpose of acquiring and operating the property; and the entity entered into a contract with an unrelated third party for the purchase of the property. Respondent simply represented USLR and each entity in connection with the purchase of the property.

In respect of count six, respondent conceded that "client trust funds were invaded" inadvertently, due to bookkeeping errors on the part of Soares, "to whom Respondent had delegated the day to day bookkeeping duties for the ATA for 19 years."

Respondent argued that he did not fail to safeguard Jade's funds by transferring them to the RMA account and using them, as Jade had agreed to that disposition of the funds, in exchange for an extension within which to close the deal. Further, he did not commingle the Jade funds with the RMA funds, as the funds lost their status as trust funds once they were released from the ATA and deposited in the RMA account, with Jade's/Rice's permission.

According to respondent, he cannot be held strictly liable, under RPC 1.15(a) or RPC 5.3, for Soares' "unintentional errors." Rather, the clear and convincing evidence must establish that respondent engaged in the negligent

conduct. Specifically, respondent argued that he could not be found to have failed to supervise Soares "simply because the invasion of funds happened." Further, the lack of three-way reconciliations and respondent's so-called lack of personal awareness of ATA balances or his "'little grasp of his ATA recordkeeping,'" had "no nexus" to the prevention of Soares' errors, which caused the invasion of funds. According to respondent, his rebuttal brief detailed his efforts at ensuring that Soares' conduct was compatible with the professional obligations of a lawyer.[22]

Further, in respect of RPC 5.3(c), there was no evidence that respondent had ordered or ratified Soares' invasion of client funds; that he knew of the conduct at a time when its consequences could have been avoided or mitigated but failed to take remedial action; or that Soares previously had engaged in such conduct, which could have been discovered even if an investigation had been made."

Respondent admitted to having made electronic transfers without written authorizations; maintaining a debit balance on the Old Lumberyard ledger card; failing to perform three-way reconciliations; and failing to maintain copies of

[22] If, by "rebuttal brief," respondent meant the reply summation submitted below, the special master did not review that document, as "[r]espondent was directly instructed during trial that no Reply Summation would be allowed." Thus, this decision omits the claims asserted in that pleading.

deposit slips and wire confirmations for a period of seven years. He claimed that he now performs the required three-way reconciliations and has "instituted the corrective changes discussed with the OAE immediately after the audit."

Respondent continued to dispute two violations, that is, the failure to maintain ledger cards for TSE and the Borough of Allentown, and the deposit of legal fees in the ATA. According to respondent, TSE and the Borough of Allentown were not B&B clients, and the legal fees maintained in the ATA were owed to Cannon, not B&B.

Respondent seemed to argue that none of the charged RPC violations were supported by clear and convincing evidence and, further, "incorrect legal standards were applied . . . to many of the claimed violations." He emphasized that he has practiced law, without incident, for more than fifty-four years; that "no client or third party has suffered any economic loss or was ever inconvenienced;" that he cooperated fully with the OAE's investigation; and that he "promptly implemented the OAE's bookkeeping recommendations for corrective actions after the audit."

Respondent took issue with the special master's finding that he lacked remorse, which was based solely on his failure to admit the RPC violations. Moreover, in those instances where respondent believed that he violated certain recordkeeping rules, he readily admitted the violations. He neither suggested

that the charges be dismissed nor recommended a form of discipline for the few recordkeeping violations that he had conceded.

* * *

The special master concluded that respondent had violated all RPCs charged in the formal ethics complaint. Specifically, respondent violated RPC 1.8(a) by engaging in "multiple business transactions with USLR, including their joint investments in" Bank Building Investors/Associates; Old Lumberyard Associates; 3920 Park Avenue, L.P.; Princeton Office Park, L.P.; and Wedgewood Plaza, L.P., without satisfying the waiver requirements set forth in RPC 1.8(a)(1)-(3). Respondent also violated RPC 1.8(a) by engaging in business transactions, through USLR, with the four entities, to wit, the purchase of properties that bore the names of the entities, without satisfying the waiver requirements set forth in RPC 1.8(a)(1)-(3).

The special master also found that respondent violated RPC 1.7(a) in respect of USLR and the four entities. In so doing, the special master heeded the Court's repeated warnings "of the dangers of engaging in business transactions with clients;" emphasized the principle that "an attorney's duty of loyalty is to the client, and not the lawyer's personal financial interests;" and stressed the importance of being able to "advise and act for [the] client without any thought as to [the attorney's] individual interest."

According to the special master, respondent represented USLR while holding a personal financial interest in USLR in his capacity as an owner and limited partner. In addition, as counsel for the five entities, he had an "absolute duty of loyalty and zealous advocacy" to each of them. He also had a personal financial interest in each of them, though she did not explain why. The special master found clear and convincing evidence "of a substantial risk that Respondent's representation of USLR would be materially limited by his concurrent obligations to zealously and with absolute loyalty, advocate for the interests of the five . . . entities." By way of example, she cited respondent's determination that USLR should invest in Bank Building Investors/Associates; 3920 Princeton Office Park, L.P.; and Princeton Office Park, L.P., whose bankruptcies he later directed. By his failure to satisfy the waiver requirements of RPC 1.7(b), respondent violated RPC 1.7(a) in his representation of USLR.

In the special master's view, clear and convincing evidence established a risk that respondent's representation of Bank Building Investors/Associates, 3920 Park Avenue, L.P.; Princeton Office Park, L.P.; and Wedgewood Plaza, L.P. would be materially limited by his "concurrent obligation to zealously and with absolute loyalty, defend the interests of USLR and his own personal financial interests." By way of example, the special master noted respondent's decision to run Bank Building Investors/Associates through bankruptcy; the

initiation of litigation in which USLR and Bank Building Investors/Associates were plaintiffs; and his admission that he violated RPC 1.7(a) and RPC 1.8(a), despite his claim that, in his view, the RPCs did not require him to notify an entity, which had just been formed, of his interest in USLR. In respect of 3920 Park Avenue, L.P., as attorney of record for the entity, he made multiple decisions for the client. He chose to run Princeton Office Park, L.P. through bankruptcy and to sell its assets. Finally, he represented USLR and Wedgewood Plaza, L.P. as co-defendants in the same litigation.

For the above reasons, the special master found that respondent violated RPC 1.7(a)(1) and RPC 1.8(a) by failing to comply with the waiver requirements set forth in RPC 1.7(a)(2) and RPC 1.8(a)(1)-(3).

The special master further determined that, when the bank paid the $200,000 ATA check to Jade, B&B's ATA balance was reduced to -$6,682.03. Thus, respondent negligently misappropriated client funds belonging to Princeton Office Park, L.P. ($6,300); RMA ($11,140.47); RE/MAX Neighborhood ($2,827.50); Angela Oddo ($16,000); and Ricciardi ($50), in violation of RPC 1.15(a).

By April 30, 2017, the B&B ATA should have been holding $18,877.50 for RE/MAX Neighborhood, the Oddo transaction, and Ricciardi. Instead, the running bank balance on that date was -$9.36. As of May 31, 2017, the ATA

should have held $101,477.50 for RE/MAX Neighborhood, the Oddo transaction, and Ricciardi, plus Fullerton, Baykowski, and Chang. Yet, the running bank balance was only $41,040.64. When B&B paid the $16,000 to Oddo, the funds belonging to RE/MAX Neighborhood, Ricciardi, Fullerton, Baykowski, and Chang were invaded. The special master concluded that the above facts established the negligent misappropriation of client funds by clear and convincing evidence.

The special master also determined that respondent failed to hold and safeguard Jade's $200,000 deposit by maintaining the funds separate from his own property, in violation of RPC 1.15(a). Instead, he credited the deposit to the RMA account, which he and his wife owned, and disbursed the monies, albeit with Rice's permission. When Rice requested the return of the $200,000, there were insufficient funds in the ATA to cover the check, thus establishing that the $200,000 had not been appropriately safeguarded. Moreover, by depositing the funds in an account owned by respondent and his wife, respondent commingled Jade's funds with his own, in violation of RPC 1.15(a) and (c).

The special master also determined that respondent had failed to supervise Soares, his bookkeeper, in violation of RPC 5.3(a) and (c). Specifically, he failed to make reasonable efforts to ensure that her conduct was compatible with his professional obligations, particularly his duty to comply with R. 1:21-6 and the

RPCs. He failed to ensure that she accurately monitored the ATA balances to prevent the invasion of client funds. He failed to ensure that she performed three-way reconciliations, which he did not, himself, know how to perform. His failure to monitor ATA balances resulted in Soares' error in respect of the funds required to cover the $200,000 check to Rice. During the OAE's audit, he exhibited "little grasp" of his recordkeeping duties.

The special master found that respondent had committed the following recordkeeping violations: electronically transferred funds from the ATA without proper authorization (R. 1:21-6(e)(1)(A)); failed to conduct monthly three-way reconciliations (R. 1:21-6(c)(1)(H)); maintained a client ledger card (Old Lumberyard Associates) with a debit balance (R. 1:21-6(d)); failed to maintain a ledger card for each client (R. 1:21-6(c)(1)(B)), specifically the TSE and Borough of Allentown real estate matters; deposited legal fees into the ATA (R. 1:21-6(a)(2)); and failed to maintain records of deposit slips and wire confirmations for seven years (R. 1:21-6(c)(1)(A)).

Finally, the special master concluded that respondent violated RPC 7.1; RPC 7.5(d); and RPC 8.4(c) by including Bornstein's name in the title of the law firm. In so determining, the special master noted that Bornstein had no equity interest in B&B; did not share in its profits; had no managerial responsibility for running the firm and no liability for the firm's actions; no

bookkeeping responsibilities or signatory authority over firm accounts; and did not consider himself a partner. According to the special master, by including Bornstein in the firm's name, respondent falsely "communicated to the public . . . that . . . Bornstein was a partner in the firm." He also affirmatively represented that Bornstein bore responsibility for the firm's actions. Therefore, he violated both RPC 7.1(a)(1) and RPC 8.4(c).

Respondent also violated RPC 7.5(d) by including Bornstein's name in the title, as he was not a shareholder or a member of the firm. The special master rejected respondent's argument that RPC 7.5(d) applies only to partnerships and, thus, does not include limited liability corporations. She further rejected respondent's claimed belief that he could name the firm as he chose.

For the totality of respondent's ethics infractions, the special master recommended the imposition of a reprimand. In aggravation, the special master noted respondent's failure to acknowledge his mistakes, including his refusal to accept that he had negligently invaded client funds; his lack of remorse; and his failure to perform three-way reconciliations following a 2004 random audit, which had uncovered that very recordkeeping deficiency. Although not listed among the aggravating factors, the special master also pointed out respondent's "almost defiant attitude."

In mitigation, the special master acknowledged respondent's unblemished disciplinary history.

After weighing the mitigating factor against the aggravating factors, the special master held to the recommended reprimand for the totality of respondent's ethics infractions. She also recommended that respondent be required to submit quarterly ATA reconciliations for a two-year period.

* * *

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. Specifically, we determine that the OAE established, by clear and convincing evidence, all but one of the charges lodged against respondent.

In respect of the concurrent conflict of interest charge, 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.

Despite the concurrent conflict of interest, the lawyer may proceed with the representation if, among other things, "each affected client gives informed consent, confirmed in writing, after full disclosure and consultation." RPC

1.7(b)(1).[23] Further, "[w]hen the lawyer represents multiple clients in a single matter, the consultation shall include an explanation of the common representation and the advantages and risks involved."

Respondent admitted that he did not comply with RPC 1.7(b)(1) in any matter involving USLR or the five entities in which he served as counsel. Thus, the issue in counts one through five of the complaint is whether there was "a significant risk" that respondent's representation of USLR and the five entities would be "materially limited by" his "personal interest" in USLR and the five entities.

Respondent agreed only that he had a "personal interest" in USLR and each of the five entities. In respect of USLR, it was his status as a limited partner with a 49.5% ownership interest in USLR. His personal interest in each of the entities also was his 49.5% ownership interest in USLR, which, in turn, held at least a fifty percent ownership interest in each entity, thus rendering respondent an investor in each entity.

Respondent denied that, by serving as counsel in any matter involving USLR and/or the five entities, there was a "significant risk" that the representation would be "materially limited" by his personal interest in USLR.

[23] RPC 1.7(b) contains three additional requirements that must be met before an attorney may proceed with a representation that otherwise violated RPC 1.7(a). Those requirements are not at issue because respondent admittedly did not obtain consent from his clients.

Although respondent provided a list of all B&B matters for USLR-related entities, only a few were the subject of the conflict of interest charges.

As count one of the complaint charged, respondent violated RPC 1.7(a)(2) vis-à-vis his representation of USLR, given his financial interest in USLR. See In re Mason, 244 N.J. 506 (2021) (attorney's status as a member of two LLCs, in each of which he had a financial stake, created a substantial risk that his legal representation of the entities would be materially limited by his financial interest in the success of their enterprises; attorney violated RPC 1.7(a)(2) by failing to obtain informed, written consent to the representation from the managing members of the entities; attorney disbarred on other grounds – the knowing misappropriation of escrow funds).[24]

For the same reason, as charged in counts two through five, respondent violated RPC 1.7(a)(2) vis-à-vis Bank Building Investors/Associates; 3920 Park Avenue Associates, L.P.; Princeton Office Park, L.P.; and Wedgewood Plaza, L.P., given his financial interest in those entities. Ibid.

Based on the above, RPC 1.7(a)(2) prohibited respondent's representation of USLR and the four entities in any matter, absent informed, written consent,

[24] RPC 1.13(a) states that "[a] lawyer employed or retained to represent an organization represents the organization as distinct from its directors, officers, employees, members, shareholders or other constituents." Thus, a lawyer representing the organization may represent the directors, etc., subject to the provisions of RPC 1.7.

after full disclosure and consultation, including an explanation of the common representation and the advantages and risks involved, as required by RPC 1.7(b)(1). By his admitted failure to comply with the saving provision of RPC 1.7(b)(1), respondent engaged in a prohibited concurrent representation in every matter in which he represented USLR and/or the four entities, as charged in counts one through five of the complaint.

In respect of the RPC 1.8(a) conflict of interest charge, the applicable proscription under that Rule is entering into a business transaction with a client, unless

> (1) the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be understood by the client;
>
> (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel of the client's choice concerning the transaction; and
>
> (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.
>
> [RPC 1.8(a)(1)-(3).]

Here, respondent admitted that he neither sought nor obtained from USLR and the five entities informed, written consent to the essential terms of the

transactions and his role in the transactions, including whether he was representing the clients in the transaction. However, he claimed that the formation of the entities were merely legal transactions in respect of which a potential conflict of interest, under RPC 1.8(a), would have occurred only if he had started doing business with the entities after their formation.

To be sure, many cases involving improper business transactions, and all of the cases cited by the OAE, focus on direct business transactions between a lawyer and a client. In re Torre, 223 N.J. 538 (2015) (attorney borrowed $89,250 from an elderly, unsophisticated client); In re Dato, 130 N.J. 400 (1992) (attorney purchased a residential property directly from his matrimonial client; he then re-sold the property to a second client, resulting in a $52,500 profit); In re Silverman, 113 N.J. 193 (1988) (attorney entered into an agreement with a cash-strapped client to use the client's 212-acre property as collateral for a $400,000 loan to fund the purchase of a patent agency in exchange for money which the client could use to pay his debts and living expenses); In re Reiss, 101 N.J. 475 (1986) (when three individuals asked the attorney to form a corporation for the purpose of buying and developing properties, he became the fourth shareholder in the corporation); and In re Wolk, 82 N.J. 326 (1980) (attorney, who represented a naïve and unsophisticated widow in respect of her husband's estate, of which he was executor, counseled her to invest $10,000 in a second

mortgage on a dwelling valued at half that amount, which was owned by a mortgage company in which he was a stockholder and officer, and subsequently was placed in foreclosure). Yet, in matters involving layers of interests, such as in this case, the prohibition is broader.

As the Court explained in Wolk, 82 N.J. at 333, "[w]hen a lawyer has a personal economic stake in a business deal, he must see to it that his client understands that his objectivity and his ability to give his client his undivided loyalty may be affected." Here, as a limited partner with a 49.5% ownership interest in USLR, respondent had a personal stake in each transaction in which USLR, his client, sought to purchase a property. He, thus, risked that his professional judgment, as a lawyer advising USLR in respect of the potential purchase, might be influenced by his interest as a stakeholder. See N.J. Advisory Comm. On Prof'l Ethics Opinion 462, 106 N.J.L.J. 429 (1980) (in refusing to determine that it is "per se improper" for an attorney who serves on a corporation's board of directors to also represent the corporation in any litigation or other business matters, the Advisory Committee on Professional Ethics observed that "the potential loss of professional independence inherent in the attorney-director relationship raises serious questions that may jeopardize the attorney's usefulness as director and may compromise his effectiveness as the corporate attorney").

Inversely, as a limited partner with a 49.5% ownership interest in USLR, which held at least a fifty percent interest in each entity, respondent had a personal stake in each transaction in which the entities – his clients – purchased properties. He, thus, risked that his professional judgment, as a lawyer advising the entities in respect of the potential purchases, might be influenced by his interest as a stakeholder.

Respondent's claim that compliance with the saving provisions of RPC 1.7(a)(2) and RPC 1.8(a) would have amounted to seeking informed, written consent from himself is incorrect. As RPC 1.13 makes clear, respondent required informed, written consent from other shareholders and directors, which, at a minimum, included Straub and/or Success.

Based on the above, respondent violated RPC 1.8(a) by failing to comply with subsections (2) and (3) of the saving provision of the Rule, as charged in counts one through five of the complaint.

As charged in count six, the clear and convincing evidence established that respondent failed to safeguard and negligently misappropriated client and third-party funds – violations of RPC 1.15(a). Although Rice granted respondent permission to borrow the $200,000, when Rice requested the return of the monies, the $200,000 check overdrew the ATA by $6,682.03 and the Old Lumberyard Associates ledger by $43,000, thus, causing the misappropriation

of funds belonging to Princeton Office Park, L.P., RMA; RE/MAX Neighborhood; and Ricciardi (in addition to the buyer's deposit in the Oddo real estate transaction). Further, when B&B issued the $16,000 ATA check in the Oddo real estate transaction, the ledger had a zero balance, due to the error in recording the deposit on the wrong ledger card, and, thus, that payment invaded the funds of RE/MAX Neighborhood, Ricciardi, Fullerton, Baykowski, and Chang.

Because Rice permitted respondent to borrow the funds, he was permitted to remove them from the ATA for that purpose. Thus, by transferring the $200,000 to the RMA account, respondent did not improperly commingle Jade's funds with his personal funds.

The clear and convincing evidence also established that respondent woefully failed in his obligation to supervise Soares. RPC 5.3(a) requires every lawyer, law firm or organization authorized by the Court Rules to practice law in this jurisdiction to adopt and maintain reasonable efforts to ensure that the conduct of nonlawyers retained or employed by the lawyer, law firm or organization is compatible with the professional obligations of the lawyer. Respondent failed to meet his obligation under the Rule. He never bothered to train Soares, choosing instead to rely on a nonlawyer to do so. He wholly delegated his recordkeeping responsibilities to Soares, but never ensured that

she understood those responsibilities and carried them out accurately. In short, respondent paid no attention to the bank statements, the ledger cards, or the books, choosing instead to rely on his employee, whom he trusted "one hundred percent." Moreover, when Soares reported the recurring problems with the ATA balance, respondent repeatedly told her to "fix it." Simply put, respondent abdicated his non-delegable recordkeeping duties.

RPC 5.3(c) holds a lawyer responsible for conduct of a nonlawyer employee that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (1) the lawyer orders or ratifies the conduct involved; (2) the lawyer has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; or (3) the lawyer has failed to make reasonable investigation of circumstances that would disclose past instances of conduct by the nonlawyer incompatible with the professional obligations of a lawyer, which evidence a propensity for such conduct.

In this case, a 2004 audit uncovered several bookkeeping issues with B&B. One such issue was the failure to perform monthly three-way reconciliations. At the time of the audit, Soares was an employee, but respondent took no remedial action at the time, and, thus, the firm's recordkeeping deficiencies continued unabated.

As alleged in count seven of the complaint, the clear and convincing evidence established that respondent committed the following recordkeeping violations: electronic transfer of funds from the ATA without proper written authorization, contrary to R. 1:21-6(c)(1)(A); no monthly three-way reconciliations were performed, contrary to R. 1:21-6(c)(1)(H); the Old Lumberyard Associates client ledger card had a debit balance, contrary to R. 1:21-6(d); the firm did not maintain individual ledger cards for each client, contrary to R. 1:21-6(c)(1)(B); legal fees were deposited in the ATA, contrary to R. 1:21-6(a)(2); and deposit slips and wire confirmations were not maintained for seven years, contrary to R. 1:21-6(c)(1)(A). He, therefore, violated RPC 1.15(d).

Respondent's insistence that the firm did not violate R. 1:21-6(c)(1)(B) by failing to maintain ledger cards for TSE and the Borough of Allentown misses the mark. Although he claimed that these clients were Cannon's, not B&B's, the fact is that Cannon was a B&B employee and handled those matters while employed by the firm. Thus, ledger cards were required, and, further, the fees paid to Cannon for those matters should have been deposited in the attorney business account, not B&B's ATA.

RPC 7.1(a) prohibits a lawyer from making false or misleading communications about the lawyer, the lawyer's services, or any matter in which

the lawyer has or seeks a professional involvement. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading. RPC 7.1(a)(1). Here, the communication at issue is the law firm banner, Bornstein & Berger, LLC, which falsely represents that Bornstein is a member of the LLC, thus violating RPC 7.1(a) and, consequently, RPC 8.4(c), which proscribes misrepresentations.

Pursuant to RPC 7.5(d), lawyers may state or imply that they practice in a partnership only if the persons designated in the law firm name and the principal members of the firm share in the responsibility and liability for the firm's performance of legal services. Respondent's position that the letter of the law applies to partnerships, not limited liability companies, and, therefore, he cannot be found in violation of the Rule is incorrect.

Rule 1:21-1B of the Court Rules, which authorizes attorneys to engage in the practice of law as limited liability companies, requires the name of such limited liability companies to "comply with the provisions of RPC 7.5." R. 1:21-1B(c). It, thus, follows that the term "partnership," as used in RPC 7.5(d), may be interchanged with the phrase "limited liability company." Accordingly, respondent violated RPC 7.5(d), by designating his law firm Bornstein & Berger, LLC, because Bornstein was not a member of the LLC.

In sum, respondent violated RPC 1.7(a)(2) (five instances); RPC 1.8(a) (five instances); RPC 1.15(a) and (d); RPC 5.3(a) and (c); RPC 7.1(a)(1); RPC 7.5(d); and RPC 8.4(c). We dismiss the allegation that respondent violated RPC 1.15(c). The sole issue left for determination is the proper quantum of discipline for respondent's misconduct.

Attorneys who enter into business transactions with clients must comply with the disclosure and consent requirements of RPC 1.8(a) and, when circumstances require, the additional disclosure and consent requirements of RPC 1.7(a). See, e.g., In re Rajan, 237 N.J. 434 (2019) (reprimand for attorney who, while representing his client in the purchase of a property that the client intended to develop into a hotel, introduced the client to two other clients who agreed to fund fifty percent of the hotel project; when the client could not fund his fifty percent share, a holding company formed by the attorney and his brother and brother-in-law lent $450,000 ($350,00 of which was the attorney's) to the client so that he could close the transaction; the attorney, thus, acquired a security and pecuniary interest adverse to his client and became potentially adverse to the other clients; the attorney did not advise his clients to seek the advice of independent counsel, and he did not obtain their informed, written consent to the loan transaction; the attorney also represented the client in the real estate transaction and received $32,500 in legal fees; violations of RPC

1.7(a) and RPC 1.8(a)); In re Futterweit, 217 N.J. 362 (2014) (reprimand for attorney who, in lieu of legal fees, agreed to share in the profits of his client's business, without first advising the client, in writing, of the desirability of seeking the advice of independent counsel and obtaining the client's written consent to the transaction, a violation of RPC 1.8(a)); In re Gertner, 205 N.J. 468 (2011) (reprimand for attorney who provided legal representation at the closings on houses that he and his business partner purchased and flipped, without complying with the requirements of RPC 1.8(a); he also negligently misappropriated client funds on four occasions); In re Schwartz, 216 N.J. 167 (2013) (censure for attorney who violated RPC 1.7, in one matter, by forming a business with an employee of a pre-existing client, which competed with the pre-existing client's business that the attorney represented in a landlord-tenant action; the attorney also represented the pre-existing client in a contract and personal injury action in which she was the plaintiff and the employee was a defendant; finally, the attorney violated RPC 1.8(a) by failing to obtain informed, written consent from the pre-existing client's employee with whom he formed the competitor business; attorney also violated RPC 1.15(c)); In re Levin, 213 N.J. 524 (2013) (censure for attorney who engaged in multiple conflicts of interest under former RPC 1.7 and RPC 1.8;[25] in one matter, he

[25] For the purpose of this case, former RPC 1.7 and RPC 1.8 did not differ from current RPC

violated former RPC 1.7(a)(1) by undertaking the representation of a divorcing married couple in a business dispute between their company and the purchaser of the company's assets, on the agreement that the husband, the minority shareholder, would pay the attorney's legal fees and the wife would receive any recovery in the lawsuit, which placed the husband in the position of calling the shots in the litigation; thereafter, the attorney violated former RPC 1.7(b) by continuing to represent the husband in the matter after the husband had sued him for malpractice; finally, he violated former RPC 1.8(a) by entering into an agreement with the husband and two other individuals to become a partner in the purchase of an office building, without providing the client with any writing fully disclosing the transaction and terms and obtaining the client's written consent to the attorney's participation in the partnership; we also found it "highly questionable" that the attorney had advised his client to seek the advice of independent counsel; the attorney also violated former RPC 1.4(b); RPC 1.15(b); RPC 3.3(a)(1); and RPC 8.4(c)); and In re Mason, 244 N.J. 506 (2021) (attorney's status as a member of two LLCs, and his corresponding financial stake in both, created a substantial risk that his legal representation of the entities would be materially limited by his financial interest in the success of their enterprises; he, thus, violated RPC 1.7(a)(2) by failing to obtain informed,

1.7 and RPC 1.8 in any material respect.

written consent to the representation from the managing members of the entities; the attorney also violated RPC 1.8(a) by entering into an agreement with one of the LLCs for a one-percent ownership interest in the company in exchange for legal representation; the attorney was disbarred for knowing misappropriation of escrowed investors' funds).

It is well-settled that, absent egregious circumstances or serious economic injury, a reprimand is the appropriate discipline for a conflict of interest. In re Berkowitz, 136 N.J. 134, 148 (1994).

Standing alone, reprimands are imposed on attorneys who commit recordkeeping violations that cause the negligent misappropriation of client funds; fail to supervise nonlawyer employees whose poor recordkeeping practices result in negligent misappropriation of client funds; and make a misrepresentation. See, e.g., In re Mitnick, 231 N.J. 133 (2017) (RPC 1.15(a) and (d); as the result of poor recordkeeping practices, the attorney negligently misappropriated client funds held in his trust account; the attorney had an unblemished disciplinary record in a thirty-five-year legal career); In re Murray, 185 N.J. 340 (2005) (RPC 5.3(a) and (b); attorney failed to supervise nonlawyer employees, which led to the unexplained misuse of client trust funds and to negligent misappropriation; the attorney also committed recordkeeping

violations); In re Kasdan, 115 N.J. 472, 488 (1989) (RPC 8.4(c); clients); and In re Walcott, 217 N.J. 367 (2014) (RPC 8.4(c); third party).

A reprimand is insufficient discipline in this case. First, respondent's violations do not stand alone. Of particular concern is the multitude of prolonged conflicts of interest in which he has engaged throughout his career. As respondent admitted, ninety percent of B&B's reason for existence was USLR and its entities. Respondent's livelihood stemmed from his business interests in USLR and its entities, in addition to the legal fees generated by USLR and its entities. Respondent's numerous conflicts of interest have significantly and improperly enhanced his source of income, thus resulting in personal gain, which constitutes an aggravating factor.

In further aggravation, despite his lessons learned during the 2004 random audit, respondent failed to take his recordkeeping and supervisory responsibilities more seriously. Soares continued to be the "go to" person in respect of the firm's recordkeeping responsibilities of which she had "almost complete responsibility." Most concerning is the multiple times Soares brought shortages to respondent's attention. Rather than work with her to determine the cause, rectify the problem, and ensure that it did not happen again, respondent simply told Soares to "fix it." Simply put, respondent improperly abdicated his non-delegable recordkeeping responsibilities.

These aggravating factors justify the imposition of a censure for the totality of respondent's misconduct. To be sure, he has an unblemished disciplinary history in more than fifty-five years at the bar. However, his stellar record and the aggravating factors are in equipoise, at best, given that respondent's conflicts of interest comprised most of his legal practice and his livelihood.

Moreover, we determine to impose the condition that respondent submit monthly reconciliations of his attorney accounts to the OAE, on a quarterly basis, for a two-year period.

Members Boyer, Petrou, and Singer voted to impose a reprimand with the same condition.

Member Hoberman was recused.

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: **/s/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Lawrence S. Berger
Docket No. DRB 20-200

Argued: February 18, 2021

Decided: June 8, 2021

Disposition: Censure

Members	Censure	Reprimand	Recused
Clark	X		
Gallipoli	X		
Boyer		X	
Hoberman			X
Joseph	X		
Petrou		X	
Rivera	X		
Singer		X	
Zmirich	X		
Total:	5	3	1

/s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel