Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-015
District Docket No. XIV-2020-0474E

In the Matter of	:
Stephanie A. Hand	:
An Attorney at Law	:

Decision

Argued: May 20, 2021

Decided: September 16, 2021

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

John McGill, III appeared on behalf of respondent.

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

This matter previously was before us (DRB 20-175) on a motion for final discipline filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-13(c)(2), following respondent's March 30, 2017 conviction, in the Superior

Court of New Jersey, of two second-degree crimes: conspiracy, in violation of N.J.S.A. 2C:5-2(a)(1), and theft by deception, in violation of N.J.S.A. 2C:20-4.

In that motion, the OAE asserted that respondent's convictions established violations of RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer) and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

On October 21, 2020, we denied the motion for final discipline and remanded the matter to the OAE for further proceedings, including an investigation into whether respondent violated RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985). We determined to remand the matter in consideration of our more recent decisions regarding the breach of fiduciary obligations by attorneys serving as escrow agents and the corresponding application of Wilson and Hollendonner.

The matter was returned to us on a second motion for final discipline filed by the OAE. In the instant motion, the OAE asserted that respondent's crimes violated RPC 8.4(b), RPC 8.4(c), and constituted knowing misappropriation, pursuant to the principles of Wilson and Hollendonner.

For the reasons set forth below, we determine to grant the motion for final discipline and recommend to the Court that respondent be disbarred.

Respondent earned admission to the New Jersey bar in 2000, and to the Pennsylvania and New York bars in 1994. At the relevant times, she maintained an office for the practice of law in Livingston, New Jersey.

In 2010, respondent received an admonition for violating RPC 1.3 (lack of diligence) and RPC 8.4(d) (conduct prejudicial to the administration of justice). In that matter, she proceeded with her client's real estate purchase, despite her knowledge that the seller had filed a bankruptcy petition and the sale, thus, required the prior approval of the bankruptcy court. Respondent relied on the seller's representation that the bankruptcy court had approved the sale, which was not true. Eventually, the bankruptcy court approved the sale. Respondent was ordered to return her fee to her client. In the Matter of Stephanie A. Hand, DRB 10-196 (September 29, 2010).

In 2015, respondent received a second admonition for lack of diligence and failure to communicate with a client (RPC 1.4(b)). During a period of almost nine months, she failed to perform work on her client's matter or to inform him that an arbitrator's decision in favor of his contractor was not appealable. Rather, she continued to allow the client to believe that she would complete and file a complaint on his behalf. In the Matter of Stephanie A. Hand, DRB 14-291 (January 20, 2015).

From December 1 to December 9, 2015, respondent was temporarily suspended from the practice of law as a result of her guilty plea in the United States District Court for the District of New Jersey to two misdemeanor counts of failure to file income tax returns in violation of 26 U.S.C. § 7203. In re Hand, 223 N.J. 362 (2015); In re Hand, 223 N.J. 401 (2015).

Effective October 31, 2018, the Court suspended respondent for one year, on a motion for final discipline, based on the same federal tax offenses, which constituted violations of RPC 8.4(b) and RPC 8.4(c). In re Hand, 235 N.J. 367 (2018).

In the interim, effective July 6, 2017, following respondent's criminal convictions underlying this matter, the Court again temporarily suspended her from the practice of law. In re Hand, 229 N.J. 514 (2017).

Respondent remains suspended to date in New Jersey, pursuant to both the temporary suspension and the one-year disciplinary suspension.

Effective March 10, 2021, respondent was disbarred on consent in Pennsylvania, following her pro se submission of a "Verified Statement of Resignation." Respondent's resignation addressed both her federal, misdemeanor failure to file income tax returns, and her New Jersey criminal convictions, for conspiracy and theft by deception, underlying this matter. In her resignation submission, respondent stated her desire to resign "because

she is guilty of these crimes" and "knows that if the charges were predicated upon the convictions, she could not successfully defend against them."[1]

The facts of respondent's criminal convictions of conspiracy and theft by deception are as follows. Between December 1, 2008 and July 31, 2009, she participated in a mortgage fraud scheme orchestrated by her co-defendants, Thomas D'Anna and Julio Concepcion, whereby straw buyers fraudulently purchased from D'Anna two properties, one for $415,865.77 and the other for $457,655.45. Concepcion created the straw buyers via stolen identities obtained from unknowing residents of Puerto Rico. Concepcion created false driver's licenses; bank accounts; identification documents; social security numbers; wage statements; and tax information. D'Anna then leveraged the fabricated records to secure mortgages in the name of the straw buyers; the mortgage broker relied on those documents and delivered the mortgage applications to the lender. In turn, the lender relied on the false records and approved the mortgage loans. Both loans required, as a condition precedent to funding by the lender, that the buyers advance a cash down payment of 10% of the purchase price – more than $40,000 for each transaction.

[1] Following oral argument in this matter, at our request, the Office of Board counsel procured respondent's Pennsylvania resignation file from the Disciplinary Board of the Supreme Court of Pennsylvania.

Respondent served as the settlement/escrow agent for both transactions and also purportedly represented the buyers. Respondent claimed that, in connection with the first closing, someone purporting to be the buyer appeared at her office, prior to D'Anna's arrival, and signed the closing documents. A different attorney, who was not present at the closings, represented D'Anna as seller. The buyer did not advance the 10% down payment but stated that he would provide a check to D'Anna within twenty-four hours. According to respondent, she notified D'Anna regarding the absence of the down payment, and he permitted the closing to continue.

Respondent, however, executed a Department of Housing and Urban Development (HUD-1) closing statement, in which she falsely certified that she had received the buyer's 10% down payment. Pursuant to the lender's instructions, respondent, as the settlement agent, was required to receive the down payment funds, deposit them in her escrow account, and "certify that the HUD closing statement contained a true and accurate statement of all funds received and disbursed." Respondent falsely certified to the lender that she had followed the lender's master and supplemental closing instructions – including the lender's fraud prevention instructions – and, thus, permitted the loan to close under false, criminal pretenses. A representative of the lender testified that, had the lender known that respondent had not received

the buyer's down payment, the lender would not have disbursed the loan proceeds.

The lender wired the more than $400,000 in mortgage proceeds to respondent's attorney trust account (ATA) in reliance on her false, criminal representations. Respondent paid several fees associated with the transaction, and made the following disbursements from her ATA: (1) she satisfied two existing mortgages that D'Anna had taken on the property; (2) she issued a check to a company that Concepcion controlled, allegedly to pay an outstanding invoice for remodeling work that had not been performed at the property; and (3) she transferred to D'Anna the remaining funds, which were less than the amount listed on the HUD statement because respondent never collected the down payment. Respondent was paid an $1,800 fee for her participation in the closing.

Concepcion, who had control of the bank account opened in the name of the first straw purchaser, made three mortgage payments before defaulting on the mortgage. His reason for making the payments likely was to avert suspicion of the fraud. Ultimately, the lender foreclosed on the property.

The closing for the second property occurred a few weeks later. This time, the purported buyer did not appear at respondent's office. Moreover, respondent knew that D'Anna had not received the required 10% down

payment. Nevertheless, respondent allowed the closing to proceed and again executed the HUD-1 closing statement, in which she falsely stated that the buyer had paid the 10% down payment. Respondent again falsely certified that she followed the lender's instructions, which required her to deposit the down payment in her escrow account. As in the first transaction, had the lender been aware that the buyer did not remit the down payment, it would not have disbursed the loan proceeds.

The lender wired the more than $400,000 in mortgage proceeds to respondent's ATA, again in reliance on her false, criminal representations. Respondent paid multiple fees associated with the purchase, and made the following disbursements from her ATA: (1) she satisfied an existing mortgage on the property that D'Anna had taken; (2) she issued a check to a company that Concepcion controlled, allegedly to pay an outstanding invoice for remodeling work that was not performed at the property; and (3) she transferred the remaining funds to D'Anna, which were less than the amount listed on the HUD, because respondent never collected the down payment. Respondent was paid a $2,200 fee for her participation in the second closing.[2]

[2] Respondent received a total of $4,000 in fees for serving as an attorney and escrow agent for both transactions.

As in the first transaction, Concepcion controlled the bank account in the name of the straw buyer, made a few mortgage payments, and then defaulted, leading the lender to foreclose on the property.

In 2014, a grand jury indicted respondent, D'Anna, and Concepcion on charges of (1) first-degree conspiracy to commit money laundering and/or theft by deception, N.J.S.A. 2C:5-2, N.J.S.A. 2C:21-25(b)(2)(a), and N.J.S.A. 2C:20-4(a) (count one); first-degree money laundering, N.J.S.A. 2C:21-25(b)(2)(a) (count two); and second-degree theft by deception, N.J.S.A. 2C:20-4(a) (count three). D'Anna, Concepcion, and two other defendants were also charged with the fraudulent sale of a third property, a transaction in which respondent was not involved.

On March 16, 2017, respondent was tried separately from D'Anna and Concepcion; following consultation with her counsel, she elected to not testify. D'Anna had pleaded guilty to second-degree conspiracy, received non-custodial probation, and agreed to provide truthful testimony regarding respondent's role in the mortgage fraud scheme. At respondent's trial, D'Anna testified that he and respondent entered into an agreement to lie on the HUD closing statements regarding the receipt of the down payments from the purchasers in order to secure the issuance of the two loans and to complete the closings. D'Anna further testified that he knew respondent

from prior transactions in which she had represented buyers to whom D'Anna had sold homes. Concepcion testified that both he and D'Anna were involved in the mortgage fraud conspiracy but denied that he had conspired with respondent. Concepcion further testified that he did not know respondent and had never met her.

The trial court limited respondent's defense counsel's cross-examination of D'Anna regarding his potential sentencing exposure at the time he entered into his plea agreement. Although respondent's counsel wanted to question D'Anna concerning a twenty-year maximum potential sentence, the court limited the questioning to the seven-year sentence offered in the State's first plea offer, which ultimately was negotiated down to a probationary sentence. The trial court determined that, as a first-time offender, D'Anna was unlikely to receive the maximum sentence and, thus, concluded that any such reference to a potential twenty-year sentence could mislead the jury.

On March 30, 2017, the jury found respondent guilty of second-degree conspiracy, second-degree money laundering, and second-degree theft by deception. At respondent's September 15, 2017 sentencing, the Honorable John T. Gizzo, J.S.C., merged count one into count two and sentenced respondent to a four-year term of imprisonment on count two, and a four-

year term of imprisonment on count three, to be served as two, four-year, consecutive terms.

In crafting the sentence, Judge Gizzo remarked that it was disappointing when members of the bar go "astray," but that respondent was a "good person." In mitigation, the court found that imprisonment would entail a hardship on respondent and her fifteen-year-old daughter; that respondent had not contemplated that her conduct could result in serious harm; and, that, even though she had a prior tax offense, she was, in general, a law-abiding citizen who did not pose a risk of recidivism. The court found, in aggravation, that respondent required deterrence and that her offense concerned a fraudulent or deceptive practice committed against a governmental entity. The court concluded that the mitigating factors outweighed the aggravating factors, and sentenced respondent as a third-degree offender. The court did not require respondent to pay restitution.

Respondent appealed her conviction, and the Appellate Division determined that "D'Anna's testimony that he and [respondent] agreed to submit false HUD statements in order to entice the lender to release the mortgage loans was sufficient for the jury to convict [respondent] of conspiracy to engage in theft by deception." The Appellate Division, however, reversed respondent's money laundering conviction, concluding

that the record contained evidence of respondent's criminal acts of conspiracy and theft by deception, and "not a subsequent transaction by defendant designed to conceal or disguise the nature, location, source, ownership, or control of the property obtained through her criminal activity." The Appellate Division found that respondent's role in the fraud was limited to proffering the false HUD statements, inducing the lender to disburse the mortgage loan proceeds based on the false statements, and distributing the mortgage loan proceeds pursuant to the false statements.

Further, the Appellate Division affirmed the trial court's decision to limit respondent's counsel's cross-examination of D'Anna in respect of his plea agreement, concluding that D'Anna did not realistically face a twenty-year sentence. Having affirmed respondent's convictions of theft by deception and of conspiracy to commit theft by deception, the Appellate Division remanded the matter for a new sentencing hearing.

On February 28, 2020, Judge Gizzo re-sentenced respondent to time served. She had been incarcerated for six months and had completed a lengthy term of Intensive Supervision Parole (ISP). Referring to the aggravating and mitigating factors found during the original sentencing hearing, the court found that the mitigating factors "substantially outweigh" the aggravating factors and remarked that respondent was a "model ISP

participant" who gives back to the community. Respondent had submitted numerous letters supporting her good character, which maintained that she was a better person after completing her prison sentence than she was prior to entering prison, and noted that she often represented pro bono clients. Her successful completion of ISP included weekly drug testing and reporting, attending meetings, maintaining a journal, performing community service, being subject to unannounced home visits, and participating in a drug treatment program, although respondent denied that she had a drug problem.

Following the Board's October 2020 remand of the first motion for final discipline, the OAE determined that, given the record of the criminal proceedings against respondent, a plenary investigation was "not necessary." Accordingly, the OAE filed the instant motion for final discipline.

In the instant matter, the OAE urged disbarment for respondent's misconduct. Specifically, the OAE maintained that, by serving as the closing agent in two transactions, and purposefully failing to follow the lender's closing instructions, which required receipt of the 10% down payments prior to closing the transactions, respondent improperly disbursed the lender's escrowed loan funds, in violation of Hollendonner.

Respondent, through counsel, argued that the OAE filed the instant motion for final discipline "without authority to do so," claiming that the OAE "ignored

and disobeyed" our October 2020 remand letter. Respondent maintained that, consequently, the OAE's motion should not be entertained. In that vein, respondent argued that her conviction was based on unreliable evidence and that a motion for final discipline deprives her of fundamental fairness and due process. Specifically, respondent asserted that D'Anna's testimony was not reliable and that the trial court and Appellate Court erred in their analysis of evidentiary rulings made during respondent's trial. Respondent, thus, interpreted our remand letter as a demand that the OAE conduct a plenary investigation, file a formal ethics complaint, and hold an ethics hearing, during which proceedings respondent represented that she would testify. In fact, respondent characterized our remand letter as a determination that "the criminal record is insufficient upon which to evaluate whether [r]espondent knowingly violated the principles of Hollendonner."

Respondent further maintained that she had raised "material and good faith challenges" to the reliability of the evidence underpinning her convictions and, thus, a formal ethics complaint and disciplinary hearing is the only manner in which the OAE should have proceeded. In essence, respondent is seeking to pursue a collateral attack on her conviction via the disciplinary proceedings.

In the alternative, respondent asserted that we should view respondent's misconduct through the lens of In re Nihamin, 217 N.J. 616 (2014), and

determine not to recommend respondent's disbarment; moreover, respondent claimed that this matter constituted a case of first impression under Hollendonner, and that a disbarment outcome would deprive respondent of fundamental fairness and due process.

As to her second point, respondent characterized her misconduct as "nearly identical" to the facts of Nihamin. In that case, in connection with a motion for final discipline, the attorney was suspended for three months for disbursing loan proceeds in violation of the lenders' closing instructions and preparing HUD-1 statements that falsely indicated that earnest money deposits had been advanced. In the Matter of Felix Nihamin, DRB 13-245 (December 18, 2013) (slip. op. at 22). The OAE had urged Nihamin's disbarment under the theory that his conviction for the third-degree crime of misapplication of entrusted property constituted violations of RPC 8.4(b), RPC 8.4(c), and the principles of Wilson and Hollendonner. Id. at 7-9.

In connection with his criminal matter, Nihamin admitted that he had made misrepresentations on numerous HUD-1 forms regarding receipt of earnest money deposits, despite knowing that mortgage lenders would rely on the inaccurate information when authorizing the closing and funding of the transactions. Id. at 3-4. Nihamin further admitted that, as an escrow agent, he

had a fiduciary duty to the lenders and the parties to the transactions and was obligated to follow the lenders' closing instructions. Ibid.

In determining to impose only a term of suspension, we did not analyze Nihamin's misconduct through the lens of his role as escrow agent to the operative transactions. Id. at 13. Rather, we examined Nihamin's misconduct strictly as misrepresentations in closing documents and applied that line of disciplinary precedent, which mandated a term of suspension. Ibid.

Given our decision in Nihamin, which the Court adopted, respondent argued that a disbarment recommendation for her misconduct would constitute a new rule that "would repudiate the long line of cases evaluating attorneys who made misrepresentations in closing documents," and, thus, should only be applied prospectively.

During oral argument before us, the OAE reiterated the arguments set forth in its motion papers.

Respondent, through counsel, argued that the OAE's motion was in "bad faith" and was "ridiculous." Respondent reiterated the assertion that we had not authorized the instant motion but, rather, had directed the OAE to proceed by way of plenary investigation. Respondent further asserted that her conduct was not as serious as that of the attorney in Nihamin and that, thus, disbarment was not warranted. Alternatively, respondent reiterated the argument that any

application of Hollendonner in this case must be prospective, because it would constitute a case of first impression and the pronouncement of a new rule.

Respondent conceded that her falsification of HUD-1 settlement statements and criminal convictions justified a one-year term of suspension, to be imposed retroactively. Upon questioning by us, respondent's counsel further conceded that the mortgage loan proceeds under scrutiny constituted escrow funds, and that respondent had disbursed those escrow funds in violation of the lender's closing instructions. Despite those concessions, respondent's counsel maintained that respondent was not on notice that her misconduct could constitute knowing misappropriation, and that she did not commit knowing misappropriation under the facts of this case.

* * *

Following a review of the record, we determine to grant the OAE's motion for final discipline. As detailed further below, we agree with the OAE's determination that a plenary investigation was not required in this case and reject respondent's assertion that we had instructed the OAE to proceed with such an investigation due to a perceived deficiency in the record before us. To the contrary, we find that the record establishes, by clear and convincing evidence, that respondent committed the knowing misappropriation of escrow funds, in violation of RPC 8.4(b), RPC 8.4(c), and the principles of Wilson and

Hollendonner. Moreover, even if she had not committed knowing misappropriation, respondent's cumulative criminal history supports her disbarment. Considering the conflicting disciplinary precedent, we view this case as an opportunity to settle and clarify New Jersey law regarding the breach of fiduciary obligations by attorneys serving as escrow agents in mortgage loan transactions.

As a threshold matter, we wholly reject respondent's procedural arguments in opposition of the instant motion. First, the OAE's determination to file the instant motion neither disobeyed our remand letter nor deprived respondent of the due process provided to her by the Court Rules governing attorney discipline. Respondent has sought to construe the language of our remand letter much too narrowly – particularly, the word "investigation." We did not employ the word "investigation" as a literal directive; the word "inquiry" would have been just as suitable. Had we required that the OAE file a formal ethics complaint and proceed by way of a hearing, we would have instructed the OAE accordingly.

Moreover, in connection with the OAE's prior motion for final discipline, and contrary to respondent's position, we made no finding that the criminal record of respondent's trial was insufficient for a second motion for final discipline. Rather, we questioned why the OAE had not pursued a knowing

misappropriation theory in the first motion for final discipline, especially considering our most recent decision addressing similar misconduct by an attorney – In the Matter of William J. Soriano, DRB 17-179 (November 29, 2017) – discussed in detail below.

Second, and again contrary to respondent's position, we are not bound by the holding of Nihamin in connection with the facts of this case. Nihamin and the few cases that have cited it neither constitute a long line of precedent nor bind our determination regarding this fact pattern. Nihamin was decided in 2014 and we modified our view of similar fact patterns in 2017, in Soriano. Finally, this is not a case of first impression requiring the announcement of a "new rule" – again, we have repeatedly addressed such facts patterns and have simply varied in our conclusions, under Hollendonner, given each case's specific fact patterns and the operation of relevant law, as discussed below.

In a light most favorable to respondent, the constitutional arguments she raised regarding the quality of the evidence supporting her convictions are reserved for the Court. See R. 1:20-15(h). Stated plainly, however, the Court Rules governing attorney discipline in New Jersey, including motions for final discipline, do not provide to respondent any such avenue of argument or relief for convictions affirmed by the Appellate Division. She has exhausted her direct appeals and her matter is ripe for disposition.

We further note that, in respondent's verified resignation submitted to the Supreme Court of Pennsylvania, she raised no such arguments. To the contrary, she admitted that she was "guilty of these crimes," including theft by deception, and knew "that if the charges were predicated upon the convictions, she could not successfully defend against them."

We, thus, consider the instant motion for final discipline.

Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). Under that Rule, a criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Magid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995). Respondent's convictions for conspiracy and theft by deception, thus, establish violations of RPC 8.4(b) and RPC 8.4(c). Pursuant to RPC 8.4(b), it is professional misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer." Moreover, pursuant to RPC 8.4(c), it is professional misconduct for an attorney to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Hence, the sole issue is the extent of discipline to be imposed. R. 1:20-13(c)(2); In re Magid, 139 N.J. at 451-52; and In re Principato, 139 N.J. at 460.

In determining the appropriate measure of discipline, we must consider the interests of the public, the bar, and the respondent. "The primary purpose of

discipline is not to punish the attorney but to preserve the confidence of the public in the bar." Ibid. (citations omitted). Fashioning the appropriate penalty involves a consideration of many factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

The Court has noted that, although it does not conduct "an independent examination of the underlying facts to ascertain guilt," it will "consider them relevant to the nature and extent of discipline to be imposed." In re Magid, 139 N.J. at 452. In motions for final discipline, it is acceptable to "examine the totality of the circumstances," including the "details of the offense, the background of respondent, and the pre-sentence report" before "reaching a decision as to [the] sanction to be imposed." In re Spina, 121 N.J. 378, 389 (1990). The "appropriate decision" should provide "due consideration to the interests of the attorney involved and to the protection of the public." Ibid.

Respondent's criminal convictions constitute conclusive evidence of her violations of RPC 8.4(b), RPC 8.4(c), and the principles of Wilson and Hollendonner.

In Wilson, the Court described knowing misappropriation of client trust funds as follows:

> Unless the context indicates otherwise, 'misappropriation' as used in this opinion means any unauthorized use by the lawyer of clients' funds entrusted to him, including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom.

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

Six years later, the Court elaborated:

> The misappropriation that will trigger automatic disbarment under In re Wilson, 81 N.J. 451 (1979), disbarment that is 'almost invariable' . . . consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking. It makes no difference whether the money is used for a good purpose or a bad purpose, for the benefit of the lawyer or for the benefit of others, or whether the lawyer intended to return the money when he took it, or whether in fact he ultimately did reimburse the client; nor does it matter that the pressures on the lawyer to take the money were great or minimal. The essence of Wilson is that the relative moral quality of the act, measured by these many circumstances that may surround both it and the attorney's state of mind, is irrelevant: it is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment . . . . The presence of 'good character and fitness,' the absence of 'dishonesty, venality or immorality' – all are irrelevant.
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> [In re Noonan, 102 N.J. 157, 159-60 (1986).]

Thus, to establish knowing misappropriation, the presenter must produce clear and convincing evidence that the attorney used trust funds, knowing that

they belonged to the client and knowing that the client had not authorized him or her to do so. This principle also applies to other funds that the attorney is to hold inviolate, such as escrow funds. In re Hollendonner, 102 N.J. 21 (1985).

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

Specifically, in this case, respondent committed knowing misappropriation of the lender's escrow funds via criminal fraud and intentional breach of the lender's express closing instructions. She illegally and unethically disbursed more than $800,000 in mortgage proceeds, in two real estate transactions, in connection with her premeditated and intentional violation of those escrow instructions provided by the lender. She then attempted to conceal her misconduct via misrepresentations in HUD-1 settlement statements and false certifications to the lender.

Respondent was duty-bound, as the escrow agent for the transactions, to act as a fiduciary for the lender and to hold the loan proceeds in escrow until all conditions precedent (set forth in the master and supplemental closing

instructions) for the closings were met. Rather than do so, she made calculated misrepresentations to the lender regarding the receipt and deposit, in her trust account, of the required 10% buyer deposits.

It must be acknowledged that we have demonstrated inconsistent treatment of the application of Hollendonner to fact patterns similar, but not identical, to that of the instant case – specifically, cases where attorneys serving as escrow/settlement agents have intentionally misapplied escrow funds. Prior to our 2014 decision in Nihamin, several attorneys had been disbarred for their knowing misappropriation of loan proceeds and misapplication of entrusted property. See, e.g., In re Harris, 186 N.J. 44 (2006) (attorney knowingly misappropriated entrusted funds and engaged in money laundering, conspiracy to commit money laundering, theft by deception, and conspiracy to commit theft by deception; as the closing agent in several fraudulent real estate transactions, the attorney failed to satisfy liens, as required by the lender, instead distributing all of the funds as her client had directed); In re Villoresi, 163 N.J. 85 (2000) (attorney was convicted of one count of second-degree misapplication of entrusted funds and two counts of second-degree theft for failing to make disposition of property received; the attorney retained $200,000 from the sale of his client's mortgage and depleted the funds by disbursing most of them for his own purposes; he also obtained more than half of a million dollars from another

client to create a trust fund for his client's children but, instead, used the funds for his own benefit, including paying his own debts); and In re Iulo, 115 N.J. 498 (1989) (a jury found the attorney guilty of knowingly misappropriating client funds and two counts of misapplication of entrusted funds in connection with a real estate transaction; the attorney claimed that he had forgotten to pay off a mortgage; when he sent a $9,000 check to the lender, the check bounced; he knew that there were shortages in his trust account and deposited personal funds and a loan from a friend to try to cover the shortages).

In Nihamin, as in the instant case, the OAE argued that disbarment was appropriate because the attorney failed to disburse loan proceeds in accordance with the lender's closing instructions. Instead, as in this case, he followed the direction of his co-defendants. Nihamin expressly admitted, during his criminal proceedings, that he knew that the disbursements were unlawful and "involved a substantial risk of loss or detriment to the lenders."

Although we granted the motion for final discipline in Nihamin, we did not conclude that the attorney had violated Hollendonner. The Court agreed with our determination on those facts but did not issue an opinion. We have re-examined our determination in Nihamin and acknowledge that the outcome failed to distinguish that attorney's conduct from the disbarment/Hollendonner cases of Harris, Villoresi, and Iulo.

Moreover, in recent history, our view of the fiduciary duties required of attorneys in escrow situations has been distilled into clear guidance. Although our application of Hollendonner to such situations is not necessarily more expansive, it has been more finely tuned to the factual scenarios presented, as demonstrated in recent decisions. See, e.g., In the Matter of Dominic V. Caruso, DRB 20-191 (April 30, 2021) (we found that the attorney was required to hold a bulk sales escrow, inviolate, until he satisfied a condition precedent – the receipt of a clearance letter issued by the State of New Jersey, Department of the Treasury, Division of Taxation; we, thus, recommended to the Court that the attorney be disbarred for his knowing misappropriation of escrow funds; our decision is pending with the Court, which has scheduled an order to show cause); In re Mason, 244 N.J. 506 (2021) (we found that the escrow provision of a corporate operating agreement bound the attorney to safeguard investors' funds and to satisfy conditions precedent prior to any disbursement of those funds; the Court agreed, and the attorney was disbarred for his knowing misappropriation of the escrow funds); and In re Aaroe, 241 N.J. 532 (2020) (we found that, collectively, the documents underlying the transaction functioned as an escrow agreement, because they bound the attorney to disburse the funds in a particular manner; the Court agreed and the attorney was disbarred for his knowing misappropriation of the escrow funds).

As detailed above, the record in the instant matter clearly established that the more than $800,000 in mortgage loan proceeds that the lender deposited in respondent's ATA constituted escrow funds. As we opined in In the Matter of Robert H. Leiner, DRB 16-410 (June 27, 2017) (slip op. at 21), "[c]lient funds are held by an attorney on behalf, or for the benefit, of a client. Escrow funds are funds held by an attorney in which a third party has an interest. Escrow funds include, for example, real estate deposits (in which both the buyer and the seller have an interest) and personal injury action settlement proceeds that are to be disbursed in payment of bills owed by the client to medical providers." The Court agreed. In re Leiner, 232 N.J. 35 (2018).

Hollendonner, thus, stands for the proposition that an attorney who uses escrow funds, either for the attorney's benefit or the benefit of another, without obtaining the consent of the parties to the escrow agreement, will be guilty of knowing misappropriation and will face the Wilson disbarment rule.

Although respondent disbursed the loan proceeds in violation of the lender's instructions, she did not use the funds for her own pecuniary gain, in excess of her legal fee. The fact that she did not use the funds for her own purposes, however, is irrelevant. The Court has made clear that attorneys need not use funds for their own benefit to be guilty of knowing misappropriation. See In re Noonan, 102 N.J. 157, 160; In re McCue, 153 N.J. 365 (1998) (as

trustee of a trust with considerable assets, the attorney transferred $500,000 to another trust unrelated to the first trust; the attorney was found to have knowingly misappropriated trust funds, although the record contained no evidence that the attorney used those funds for his personal benefit; he was ordered, by a court, to return compensation he had distributed to himself, as trustee, in light of his fraud and negligence in administering the trust); and In re Gronlund, 190 N.J. 59 (2007) (attorney serving as escrow agent in respect of a discharge of mortgage transaction improperly disbursed $3,200 in escrow funds, despite knowing that conditions precedent had not been satisfied; we found that, although it was possible the attorney had not used the funds for his own benefit, it was clear that the funds were not used for their intended beneficiary, in violation of the terms of the escrow arrangement, a knowing misappropriation).

Finally, contrary to respondent's position, our determination that respondent's criminal conduct violated Hollendonner is not a novation or new rule requiring prospective application. In 2017, under another attorney/escrow agent fact pattern, we rejected the application of Nihamin, found a violation of Hollendonner, and recommended to the Court that the attorney be disbarred. In the Matter of William J. Soriano, DRB 17-179 (November 29, 2017). In that case, respondent served as the closing/escrow agent for a real estate transaction funded by a mortgage lender. On the HUD-1 for the closing of the loan, he

misrepresented that (1) a portion of the loan proceeds had been disbursed to pay off a prior mortgage and (2) that his clients had advanced required funds to close the transaction. His misrepresentations constituted false swearing, a violation of RPC 1.2(d) and RPC 8.4(c).

Moreover, as escrow agent and fiduciary for the lender, Soriano was obligated to satisfy an existing, $685,381 mortgage – the new lender's required condition precedent to closing and disbursement of the new loan proceeds. Soriano, however, failed to pay off the prior loan. Instead, he disbursed more than $211,000 to his client and $30,000 to his client's mother. The prior mortgage remained unpaid for over three years. That entire time, the new lender believed that the prior mortgage had been paid off and that it was in first position as lienholder on the collateral. By failing to promptly pay off the prior mortgage, Soriano violated RPC 1.15(b).

Three years later, when foreclosure actions were instituted, Soriano appreciated his dilemma. He feared a "malpractice" action against him for not having paid off the prior mortgage. Thus, he then arranged for, and personally guaranteed, a $240,000 loan to the client from his sister-in-law and brother-in-law. In the process, he engaged in a conflict of interest by (1) representing all the parties to the loan transaction without observing the safeguards of RPC 1.7, and (2) by signing the promissory note, thereby entering into a business

transaction with the parties, whom he represented in the loan transaction. Accordingly, we found that Soriano had failed to safeguard funds entrusted to him for particular purposes, thereby breaching his fiduciary duty to the new lender; had perpetrated a fraud on the new lender by disregarding its closing instructions and leading it to believe that the prior mortgage had been satisfied; assisted his clients in defrauding the new lender; and made misrepresentations on the HUD-1 form by listing a $153,000 sum as cash from borrowers, when his clients had brought no funds to the closing, and by listing $685,000 as earmarked for the satisfaction of the prior mortgage, when the mortgage was not paid off.

Soriano attempted to distinguish his conduct from the principles of Hollendonner by maintaining that he took for himself only the legal fees to which he was entitled and that he disbursed to or for the benefit of his client only those funds attributable to the mortgage loan transaction. We rejected that position, determining that his argument either ignored, or simply did not appreciate, the fact that the loan proceeds earmarked for the payoff of the prior mortgage did not belong to his client. Rather, the subject funds were escrow funds that respondent was entrusted to safeguard. The new lender had disbursed the funds to Soriano's client for the specific purpose of satisfying the prior mortgage – not to use them as he saw fit.

We concluded that Soriano clearly and admittedly made a conscious decision not to pay off the prior mortgage, despite the new lender's requirement that a portion of the loan be used for that purpose. Like respondent, Soriano then concealed his misconduct via the HUD-1 settlement statement. As a result, the prior mortgage was not satisfied for three years, until a foreclosure action was instituted, and the new lender did not have first position as a lien holder during that time. Thus, based on the specific facts and on the above principles, we viewed Soriano's misconduct "as a clear and classic violation of the principles set forth in Hollendonner." Consequently, we recommended to the Court that Soriano be disbarred.

In its Order, without issuing an opinion, the Court stated its conclusion that Soriano had not violated Wilson or Hollendonner. The Court, thus, imposed a two-year suspension. Given this posture, we determine that Soriano is neither binding precedent nor applicable to the instant case. Here, as in Harris, respondent was convicted of conspiracy and theft by deception in connection with her knowing misappropriation of loan proceeds while serving as an escrow agent.

We find that respondent, in furtherance of a criminal scheme, intentionally induced the lender's wiring of the $873,521.22 in mortgage proceeds, ignored the lender's escrow instructions, and distributed the mortgage proceeds in

accordance with the criminal scheme. Based on the record, we grant the motion for final discipline and, considering respondent's violation of the principles of Wilson and Hollendonner, we recommend to the Court that she be disbarred.

Additionally, respondent's criminal convictions underpinning the instant case constitute the second time respondent has committed criminal misconduct. Unlike her first conviction, for personal tax offenses, respondent now comes before us having leveraged her status as an attorney to perpetrate mortgage fraud.

The Court has found that attorneys who commit crimes that are serious or that evidence a total lack of "moral fiber" must be disbarred to protect the public, the integrity of the bar, and the confidence of the public in the legal profession. See, e.g., In re Quatrella, 237 N.J. 402 (2019) (attorney convicted of conspiracy to commit wire fraud after taking part in a scheme to defraud life insurance providers via three stranger-originated life insurance policies; the victims affected by the crimes lost $2.7 million and the intended loss to the insurance providers would have been more than $14 million); In re Klein, 231 N.J. 123 (2017) (attorney convicted of wire fraud for engaging in an "advanced fee" scheme that lasted eight years and defrauded twenty-one victims of more than $819,000; the attorney leveraged his status as an attorney to provide a "veneer of respectability and legality" to the criminal scheme, including the use of his

attorney escrow account); In re Seltzer, 169 N.J. 590 (2001) (attorney working as a public adjuster committed insurance fraud by taking bribes for submitting falsely inflated claims to insurance companies and by failing to report the payments as income on his tax returns; attorney guilty of conspiracy to commit mail fraud, mail fraud, and conspiracy to defraud the Internal Revenue Service); In re Lurie, 163 N.J. 83 (2000) (attorney convicted of eight counts of scheming to commit fraud, nine counts of intentional real estate securities fraud, six counts of grand larceny, and one count of offering a false statement for filing); In re Chucas, 156 N.J. 542 (1999) (attorney convicted of wire fraud, unlawful monetary transactions, and conspiracy to commit wire fraud; attorney and co-defendant used for their own purposes $238,000 collected from numerous victims for the false purpose of buying stock); In re Hasbrouck, 152 N.J. 366 (1998) (attorney pleaded guilty to several counts of burglary and theft by unlawful taking, which she had committed to support her addiction to pain-killing drugs); In re Goldberg, 142 N.J. 557 (1995) (two separate convictions for mail fraud and conspiracy to defraud the United States); In re Messinger, 133 N.J. 173 (1993) (attorney convicted of conspiracy to defraud the United States by engaging in fraudulent securities transactions to generate tax losses, aiding in the filing of false tax returns for various partnerships, and filing a false personal tax return; the attorney was involved in the conspiracy for three years,

directly benefited from the false tax deductions, and was motivated by personal gain); and In re Mallon, 118 N.J. 663 (1990) (attorney convicted of conspiracy to defraud the United States and aiding and abetting the submission of false tax returns; attorney directly participated in the laundering of funds to fabricate two transactions reported on two tax returns in 1983 and 1984).

In its 1995 Goldberg opinion, the Court further enumerated the aggravating factors that normally lead to the disbarment of attorneys convicted of crimes:

> Criminal convictions for conspiracy to commit a variety of crimes, such as bribery and official misconduct, as well as an assortment of crimes related to **theft by deception and fraud**, ordinarily result in disbarment. We have emphasized that when a criminal conspiracy evidences 'continuing and prolonged rather than episodic, involvement in crime,' is 'motivated by personal greed,' and **involved the use of the lawyer's skills 'to assist in the engineering of the criminal scheme,' the offense merits disbarment**. (citations omitted).
>
> [In re Goldberg, 142 N.J. at 567.] (emphasis added)

Here, in addition to her clear violation of Hollendonner, respondent's cumulative criminal history mandates that she be disbarred to protect the public, the integrity of the bar, and the confidence of the public in the legal profession. We, thus, recommend to the Court that respondent be disbarred on both lines of precedent, and request that the Court deploy its decision to clarify the

application of Hollendonner to an attorney's intentional violation of a lender's conditions precedent to the disbursement of escrowed loan proceeds.

Member Joseph was recused.

Member Boyer was absent.

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

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

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Stephanie A. Hand
Docket No. DRB 21-015

Decided: September 16, 2021

Disposition: Disbar

Members	Disbar	Recused	Absent
Gallipoli	X		
Singer	X		
Boyer			X
Campelo	X		
Hoberman	X		
Joseph		X	
Menaker	X		
Petrou	X		
Rivera	X		
Total:	7	1	1

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