Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-116
District Docket No. XIV-2018-0273E

In the Matter of	:
Ana Ramona Tolentino	:
An Attorney at Law	:

Decision

Argued: September 23, 2021

Decided: December 17, 2021

Amanda W. Figland appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before us on a recommendation for disbarment filed by Special Master Victor Ashrafi, J.A.D. (Ret.). The formal ethics complaint charged respondent with having 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)

(committing knowing misappropriation of client and escrow funds); RPC 1.15(a) (failing to safeguard property belonging to a client or a third party); RPC 1.15(b) (failing to promptly disburse funds); RPC 1.15(d) (committing recordkeeping violations); RPC 3.1 (commencing a proceeding without a basis in law and fact); RPC 3.3(a)(1) (making a false statement of material fact to a tribunal); RPC 8.1(a) (making a false statement in connection with a disciplinary matter); RPC 8.1(b) (failing to cooperate with disciplinary authorities); RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

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

Respondent earned admission to the New Jersey bar in 1997 and has no disciplinary history. At all relevant times, she maintained a practice of law in Jersey City, New Jersey.

The facts of this matter are as follows. On September 29, 2015, Wells Fargo closed respondent's attorney trust account (ATA1) and attorney business account (ABA1) due to inactivity.

On October 26, 2016, the Office of Attorney Ethics (the OAE) performed a random audit of respondent's financial books and records for the period of

April through September 2015. That random audit revealed the following recordkeeping deficiencies: 1) fees received for professional services were not deposited in ABA1; 2) ABA1 was not properly designated; 3) respondent's ABA1 receipts journal was not fully descriptive; 4) no disbursements journal was maintained for ABA1; and 5) ATA1 was not properly designated.[1]

The OAE notified respondent of her recordkeeping deficiencies, directed her to bring her records into compliance, and closed its file. Subsequently, however, the OAE again discovered that respondent had failed to maintain business receipts and disbursements journals during the audit period of November 1, 2017 through February 28, 2019.

In November 2017, respondent opened an account with Bank of America (BoA), which was designated "Ana Ramona Tolentino Sole Prop. d/b/a Anna R. Tolentino for Attorney Trust Account" (ATA2). Notwithstanding the designation, respondent maintained that she had requested that BoA open both an attorney trust account and an attorney business account, but that, unbeknownst to her, BoA had combined the accounts.

[1] We infer that the random auditor analyzed the Wells Fargo ATA1 and ABA1, which were the only extant professional accounts in this period.

As of February 2018, respondent had failed to remove ABA1 from the list of accounts on her attorney registration. However, her new ATA2 was reported in that same registration.

On February 6, 2018, respondent issued a $50 check from ATA2 to the Disciplinary Oversight Committee to pay the filing fee for a fee arbitration matter. Consequently, on April 30, 2018, the OAE docketed this matter for investigation.

In a May 4, 2018 letter to respondent, the OAE questioned why she had issued an ATA2 check to pay the fee arbitration filing fee and directed her to produce all financial books and records maintained for November 1, 2017 through May 4, 2018. On May 30, 2018, respondent produced a signed attorney bank account disclosure form and six months of bank statements for ATA2, which she described as "solely a **business account**" (emphasis in original). Respondent stated to the OAE "No cancelled checks. No wire transfers. No receipts &/or disbursement journals. No three-way reconciliations with clients ledgers, nor debit/credit cards ever existed for this [ATA2] account" (emphasis in original). Respondent admitted that she had paid the fee arbitration filing fee via ATA2 but maintained that she did not believe she had done anything wrong, claiming that the minimal funds in ATA2 belonged to her.

On June 11, 2018, in light of respondent's assertions, the OAE directed that respondent provide 1) proof that ATA2 properly indicated that it was an "attorney business account," "attorney professional account," or "attorney office account" on all checks and monthly bank statements; 2) client names, along with each client ledger card and corresponding bank statements for any client funds maintained in ATA2; 3) clarification as to whether she maintained a different trust account, with proof of the date the account was opened; and 4) clarification of the status of ABA1, including the date the account was opened and, if closed, the date on which it was closed.

On July 2, 2018, respondent replied to the OAE, indicating that she would now operate ATA2 solely as a trust account, that her ABA1 had been closed prior to the end of 2015, and that, on June 29, 2018, she had opened a new attorney business account with Wells Fargo (ABA2). She further replied that she had no client ledger cards for ATA2 and that she did not intend to hold any escrow funds in that account in the future.

On August 8, 2018, the OAE performed the first of two demand audits of respondent's financial records. Thereafter, on August 15, 2018, the OAE directed that respondent provide: 1) monthly reconciliations of her ATA2 from November 1, 2017 onward, including copies of bank statements and a list of names and amounts held for all clients and/or law firm funds held at the end of

each month; 2) monthly receipts and disbursement journals for her ATA2; 3) proof of any and all accounts where funds received for professional services were deposited; and 4) monthly receipts and disbursements journals for her ABA2.

On October 5, 2018, respondent claimed to the OAE that, in November 2017, she had transferred $20,000 from a personal savings account to ATA2, which she immediately disbursed from ATA2 and "used towards a business transaction to assist [her] sister."[2] She further asserted that, in March 2018, she had deposited fees for legal services in ATA2, and that she had issued a $2,000 check from ATA2, toward her March 2018 rent. Respondent stated that, in June 2018, she deposited in ATA2 $15,000 in fees for legal services rendered and made a corresponding disbursement of $15,000 from ATA2 to settle an outstanding debt. She further represented that, at the time of the transactions, the funds in ATA2 were not client funds and, therefore, she treated it as an attorney business account.

On October 6, 2018, respondent supplemented her reply to the OAE, stating that, for her ATA2, she had "no list of names of clients and amounts to

[2] The OAE investigation revealed that respondent withdrew the $20,100 from a personal savings account.

be provided because [she] was not holding any money in escrow for anyone or firm and [did] not plan on doing so in the future" (emphasis in original). She admitted that she had deposited client checks for her legal services in her personal bank account but claimed she had been ignorant of her obligation to deposit all fees earned for legal services in her ABA until after the August 8, 2018 demand audit.[3] Respondent provided the OAE with updated ATA2 statements, plus two months of statements for her recently opened ABA2.

On October 10, 2018, the OAE requested verification from respondent that no client funds had been maintained in her ATA2 during the time that she treated it as her personal account, in addition to a documented explanation of the $20,100 deposit in her ATA2 and corresponding disbursement for the purported benefit of her sister, in November 2017. On October 16, 2018, respondent replied that "[n]o client funds were ever held in [her ATA]." Respondent, however, admitted that she had transferred money to her ATA2 "to pay a bill or two as evidenced by the bank statements," but represented that she intended to cease using her ATA2 as a business account.

[3] The OAE had advised respondent of this obligation in October 2016, in connection with its random audit.

The OAE again directed that respondent produce records for her financial accounts. Specifically, on December 5, 2018, the OAE directed respondent to produce: 1) documentation for her November 20, 2017 ATA2 cashier's check, in the amount of $20,000, payable to Edward S. Seradzky, Esq. c/o Mr. Getro Maceno,[4] with the corresponding client ledger card showing all receipts and disbursements; 2) documentation for her June 25, 2018 ATA2 check, in the amount of $15,000, payable to Maceno, with the corresponding client ledger card showing all receipts and disbursements; 3) monthly receipts and disbursements journals for her ATA2 beginning June 1, 2018; 4) monthly three-way reconciliations with client ledgers beginning June 1, 2018; and 5) monthly receipts and disbursements journals for her ABAs beginning June 1, 2018.

On December 19, 2018, respondent replied "[a]gain, No client funds were ever placed in my [ATA] account" (emphasis in original). Respondent further stated that she "never received or intended to receive any monies to hold in [her ATA] account from anyone [. . . .] Accordingly, there are no client receipts or disbursements for Getro Maceno" (emphasis in original). Respondent denied that Maceno was a client and claimed that the $20,000 cashier's check sent to

[4] The Nelson/Maceno matter is discussed in greater detail below. However, it should be noted that this is the same November 2017 ATA2 transfer of $20,000 that respondent previously had represented to the OAE involved a business transaction with her sister.

Maceno's attorney from her ATA2 on November 20, 2017 was for a business transaction. Respondent produced bank statements for her ABA2 from June 29, 2018 through November 2018, which listed funds received from the State of New Jersey and from a client.

On January 10, 2019, the OAE performed a second demand audit of respondent's financial accounts for 2018. The OAE questioned respondent about a March 15, 2018 transaction, in which she had deposited and then disbursed $2,000.

On January 11, 2019 the OAE directed respondent to produce: 1) her personal bank statements and any other documentation to explain a) the November 14, 2017 transfer of $20,100 from a personal bank account to her ATA2 and b) her $20,000 cashier's check paid to Maceno, along with a written explanation as to why she believed that these funds were not client funds; 2) her personal bank statements and any other documentation to explain a) the March 15, 2018 transfer of $2,000 from a personal bank account to her ATA2 and b) the $2,000 trust check paid to Hazel Roe, along with a written explanation as to why she believed these funds were not client funds; 3) her personal bank statements and any other documentation to explain a) the June 26, 2018 transfer of $15,000 from a personal bank account to her ATA2 and b) her $15,000 ATA2 check paid to Maceno, along with a written explanation as to why she believed

these funds were not client funds; 4) the complaint, answer, settlement agreement, and any other final court order connected to her dealings with Maceno; 5) a documented explanation for a December 17, 2018 ($94) overdraft of her ATA3;[5] 6) proof that her ATA2 had been closed; 7) proof that any new attorney trust account that she may have opened was properly designated; 8) monthly receipts and disbursements journals for her ABA2 from July 2018 onward; and 9) proof that her ABA2 was properly designated. The OAE's January 11, 2019 correspondence was sent via certified and mail. The certified mail was unclaimed and the regular mail was not returned. A few months later, during a March 6, 2019 conversation with the OAE, respondent claimed that she had not received the OAE's January 11, 2019 correspondence. Therefore, that same day, the OAE again sent the January 11, 2019 correspondence to respondent, via facsimile.

At this point in the OAE's investigation, respondent's initial representations regarding the activity in her ATA2 began to unravel. Specifically, on March 28, 2019, she admitted that the ATA2 funds she had disbursed to Maceno were for a real estate matter involving her clients, the

[5] On March 15, 2019, after the December 2018 overdraft of ATA2, respondent opened an attorney trust account with TD Bank (ATA3). Respondent maintained that the ($94) overdraft was the result of a bank error.

Nelsons, and were not for a business transaction with her sister, as she previously had represented. Respondent also altered her prior position regarding the $2,000 in trust funds that she paid Roe on March 15, 2018, admitting that she had represented Roe's son and that she sent the check to Roe "to refund money to her that [was] for discovery costs." Respondent then produced bank statements for a minor's trust account, titled "NJUTMA Acct for R.T.F., Ana Ramona Tolentino Custdn" (the MTA account). The minor had no authority over the MTA account.

On July 25, 2019, at the OAE's direction, respondent produced her files for the Nelson/Maceno and Roe matters.

The Nelson/Maceno Matter

The OAE's audit uncovered a real estate transaction between respondent's clients, Dexter and Donna Nelson, and Getro Maceno – the transaction that respondent repeatedly had misrepresented was a business transaction with her sister.

For approximately ten years, respondent represented the Nelsons, who were the tenants of a property in Newark, New Jersey (the Property). Beginning in January 2017, respondent defended the Nelsons in connection with an eviction matter in Essex County. The Property had been purchased at a sheriff's

sale by Wilmington Savings Fund Society FSB (the Bank), and the Bank was evicting the Nelsons.

In early 2017, respondent discussed a potential settlement of the eviction matter with Kiera McFadden-Roan, Esq., counsel for the Bank. On February 9, 2017, respondent sent McFadden-Roan a proposed contract of sale for Dexter Nelson to purchase the Property from the Bank, for $165,000. In the proposed contract of sale, which was prepared by realtor Barrington Palmer, Nelson agreed to make a $1,000 down payment and to borrow $164,000 to purchase the Property by March 29, 2017. The Bank and the Nelsons then entered into a February 16, 2017 consent judgment in the eviction matter, which granted the Nelsons until April 18, 2017 to either purchase the Property from the Bank or to vacate the Property.

Realtor Palmer had introduced Nelson to Getro Maceno. On March 10, 2017, although Nelson did not hold title to the Property, he signed an agreement to sell the Property to Maceno for $175,000, which Maceno executed three days later. Respondent was not involved with this contract to "flip" the Property and, in March 2017, she was not aware of the arrangement.

On March 13, 2017, Plan D Investment, LLC prepared a "Proof of Funds" for Nelson, stating that "Plan D Investments, LLC (private lender) has reviewed the information provided, and is pleased to notify you that on behalf of Dexer

(sic) Nelson, unencumbered liquid funds are available to close on the above referenced property for the purchase price of $165,000, as of the date of this letter." On March 17, 2017, Donna Nelson sent an e-mail to respondent with Plan D Investment's "Proof of Funds" and, on April 11, 2017, respondent forwarded the document to counsel for the Bank. At the time, respondent believed that Maceno was a representative of Nelson's lender, Plan D Investments. On April 17, 2017, Nelson signed a new agreement of sale with the Bank to either purchase the Property for $175,000 or to vacate the Property by May 30, 2017.

Sometime in June 2017, respondent informed Maceno that she could not represent him in connection with the Nelsons' sale of the Property to him and urged him to obtain independent counsel. The record is unclear as to whether Maceno had requested that respondent represent him. On June 15, 2017, respondent sent an e-mail to counsel for the Bank stating:

> I reached out to both my client and their broker, Mr. Barrington Palmer. He has informed me that the lender intends to deposit 20% of the purchase price of the property ($175,000.00 ($1000 of which is already in escrow with the broker)) in my account by tomorrow.
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> [OAE Exhibit 35.][6]

[6] "OAE Exhibit" refers to the exhibits introduced by the OAE at the ethics hearing.

On June 17, 2017, Maceno issued a $35,000 check – the deposit toward the purchase of the Property – which respondent deposited in the MTA account. Respondent then notified counsel for the Bank that she had received and was holding the deposit for the Property. Specifically, on June 30, 2017, respondent sent an e-mail to counsel for the Bank stating:

> I have personally received deposit funds, in the amount of $35,000.00 from the lender to ensure me that my clients, The Nelsons' are seriously attempting to purchase this property as soon as possible.
>
> [OAE Exhibit 38.]

Almost four months later, on October 27, 2017, the Bank notified respondent that the real estate transaction with the Nelsons had collapsed. Yet, while the real estate transaction was still pending, on June 27, 2017, ten days after her receipt of the $35,000 deposit from Maceno, respondent had disbursed funds from the MTA account, reducing the balance to $30,123.43, thereby creating a $4,865.57 shortage in Maceno's escrow funds. By December 26, 2017, the MTA account balance was only $8, due to respondent's withdrawals and disbursements. Notably, on November 22, 2017, respondent's ATA2 balance was $64, and on December 31, 2017, her ATA2 balance was $14.

On November 1, 2017, following the collapse of the transaction, Edward Seradzky, Esq., counsel for Maceno, requested that respondent return his

client's $35,000 deposit. On November 21, 2017, respondent provided Seradzky with an ATA2 check in the amount of $20,000, asserting that it represented "a portion […] of Maceno's[] deposit" and that "the balance of $15,000.00 will be held in escrow pending the lawsuit being filed against [Maceno] and others immediately." On November 28, 2017, Seradzky disputed respondent's right to withhold his client's funds and demanded the return of "the balance of the escrow [funds] in the amount of $15,000." Respondent failed to promptly return the balance of Maceno's deposit as requested.

On February 5, 2018, respondent filed a complaint in Essex County, Special Civil Part, against the Nelsons; Maceno; Plan D Investments, LLC; Nicholas Verdi (the real estate broker for the Bank); and Palmer. Specifically, respondent sought to be compensated by the defendants for legal services, in the amount of $15,000, for her claimed legal work in connection with the failed real estate transaction. On June 22, 2018, on Maceno's motion, the court ordered respondent to "immediately return the sum of $15,000.00 to Defendant Getro Maceno by delivering her trust account check in said sum of money to [Maceno's attorney] the Law Office of Edward S. Seradzky." On the date of the court's order, respondent's ATA2 balance was only $8.

On June 25, 2018, three days after the court issued the order, respondent transferred $15,000 from a personal checking account to her ATA2 and,

thereafter, issued a corresponding check from her ATA2, payable to Maceno, in the amount of $15,000.

On December 23, 2019, following the audits and its review of respondent's Maceno and Roe files, the OAE filed a three-count formal ethics complaint against respondent. Specifically, count one charged respondent with having violated RPC 8.1(a) and RPC 8.4(c) by repeatedly making false statements to the OAE. Count one also charged respondent with having violated RPC 8.1(b) by failing to timely provide full and complete responses and documentation in connection with the OAE's investigation, in addition to her failure to timely admit the nature of the funds involved in the Maceno and Roe matters.

Count two of the complaint charged respondent with having violated RPC 1.15(a) and the principles of Wilson and Hollendonner, alleging her failure to safeguard and knowing misappropriation of Maceno's escrow funds. In addition to knowing misappropriation in the Nelson/Maceno matter, count two further charged respondent with having violated RPC 1.15(b) by failing to promptly deliver funds due and owing to Maceno; RPC 3.1 by filing a complaint in the Essex County Special Civil Part for counsel fees against Maceno and others; RPC 3.3(a)(1) by falsely claiming that Maceno was a lender in that complaint; RPC 8.4(c) by misrepresenting to Maceno's attorney that she held Maceno's

$35,000 deposit in escrow; and RPC 8.4(d) by failing to return Maceno's full deposit and, thereafter, suing him for counsel fees.

Lastly, the aforementioned audits formed the basis of count three of the complaint, which charged respondent with failing to comply with her recordkeeping obligations, in violation of RPC 1.15(d).

* * *

Respondent made an oral objection to proceeding with a virtual ethics hearing, which the Special Master overruled. Respondent neither filed a formal motion to oppose the virtual hearing before the Special Master nor sought an interlocutory appeal to the Court. Accordingly, a virtual hearing took place, over the course of four days, in February 2021.

During the ethics hearing, respondent maintained that she had fully cooperated with and had made no misrepresentations to the OAE, asserting that she "did not reveal certain information about [her] clients because [she] wasn't sure if [she] was going to implicate other people." However, respondent admitted that she initially failed to disclose to the OAE the nature of Maceno's funds and had, in fact, misrepresented that the funds were related to a business transaction for her sister. She further asserted that the OAE's investigation had caused her stress.

Respondent acknowledged that Maceno's $35,000 constituted escrow funds, representing the deposit toward the purchase price of the Property, and her understanding that Nelson had intended to use the funds received from Maceno to close the real estate transaction. Respondent further admitted that she deposited Maceno's funds in the MTA account, not an attorney trust account, claiming that she did not have an attorney trust account at the time she received the funds. During the ethics hearing, respondent claimed, for the first time, that she had provided the disputed $15,000 portion of Maceno's escrow funds to another attorney, and that it had been maintained in his or her attorney trust account.[7] Respondent, however, refused to provide any information related to her alleged use of another attorney's trust account, and produced no bank statements to substantiate her claim. Indeed, respondent's claim contradicted the representation she had made in her August 21, 2019 letter to the OAE, in which she specifically represented that she had no financial accounts other than what she previously had revealed and that she "personally held this money." At the ethics hearing, respondent stated "I held it in an escrow account. I didn't say I held it in my trust account."

[7] As set forth above, the record is clear that, on June 25, 2018, respondent transferred $15,000 from a personal checking account to her ATA2 and, thereafter, issued a corresponding check from her ATA2, payable to Maceno, in the amount of $15,000.

Respondent conceded that the balance of the MTA account fell below the $35,000 required to be held on behalf of Maceno and that she, thus, had failed to maintain Maceno's escrow funds inviolate. Specifically, respondent acknowledged that she disbursed $5,000 for purported legal fees on June 23, 2017. By September 26, 2017, she had further reduced the MTA account balance to $20,951.10, and, on December 25, 2017, after the $20,000 was returned to Maceno's attorney, the MTA account balance was a mere $8. Thus, on November 28, 2017, when Maceno's attorney requested the return of the remaining $15,000 of his client's escrow funds, respondent did not have the funds in the MTA account.

Respondent testified that she had sole authority over the MTA account and, thus, she alone had the authority to make deposits or withdrawals from the account. She testified about various deposits and withdrawals from the MTA account, between June 19 and November 14, 2017, the time between Maceno's $35,000 deposit and her partial return of $20,000 of the escrow funds, including disbursements made toward the minor's expenses and extracurricular activities. As noted previously, respondent then claimed, without supporting documentation or identification of specific transactions on the bank statements in the record, that she had transferred the disputed $15,000 to another attorney's

escrow account, and that those funds represented legal fees to which respondent believed she was entitled.

Respondent claimed entitlement to those legal fees for work she purportedly had performed in connection with the Nelson/Maceno real estate transaction. She testified that the Nelsons paid her only a few hundred dollars, but that it had been verbally agreed by all involved that the payment of her legal fees for the eviction and the real estate matters would come from the sale of the Property. Notably, $5,000 for respondent's legal fees was included on the preliminary ALTA settlement statement drafted in connection with the transaction. Respondent later testified that she became fearful that she would not be paid, that she was frustrated because she spent significant time on the matter at the expense of her other cases, and, therefore, she withdrew her legal fees from Maceno's $35,000 in escrow funds while the real estate closing was pending. Based on the alleged verbal understanding that she would be paid and her fear of not being paid when the real estate transaction fell through, respondent claimed entitlement to a portion of Maceno's $35,000 deposit for her legal fees. However, respondent admitted that she had no writing to substantiate her claim to any portion of Maceno's $35,000 in escrow funds.

Respondent also admitted that Maceno's $35,000 in escrow funds was required to be used toward the purchase of the Property and that Maceno never

authorized her to deplete the funds or to utilize any portion of the funds to compensate herself for legal services. Respondent further admitted that she did not inform Maceno that she had taken $5,000 of his escrow funds. Respondent, however, argued that she did not knowingly misappropriate funds, because she "did not steal anybody's money," since she deducted from the escrow funds what she believed she should have been paid for her legal services. Notwithstanding, respondent admitted that she was frustrated about not being paid in the Nelson/Maceno matter and that she handled the situation incorrectly.

During her testimony, respondent asserted that she should not be disbarred, maintaining that she ultimately made Maceno whole. She maintained that she always had the escrow funds and that she immediately returned them, upon the trial court's order requiring her to do so. Respondent stressed her unblemished disciplinary history of twenty-four years and her claimed cooperation with the OAE's investigation. She stated that, given the nature of her practice, she was generally inexperienced in holding funds in escrow. She submitted over thirty character letters for the Special Master's consideration.

The presenter argued that respondent had made numerous misrepresentations to the OAE: 1) in her October 5, 2018 correspondence to the OAE and during the January 10, 2019 demand audit, respondent misrepresented that the $20,000 disbursement was related to a business transaction she handled

for her sister, when, in fact, it was for the real estate transaction involving Nelson and Maceno; 2) in her October 5 and October 16, 2018 correspondence, respondent misrepresented that a $2,000 disbursement from her ATA2 in March 2018 was for the payment of bills, when, in fact, it was a reimbursement to Roe, the mother of a client; and 3) in her October 6 and December 19, 2018 correspondence, respondent repeatedly told the OAE that she was not holding funds in her ATA for anyone, when, on both dates, she clearly was obligated to hold Maceno's funds in escrow. The presenter argued that respondent's alleged stress did not justify her misrepresentations to the OAE. The presenter acknowledged that respondent produced substantial financial records but described her behavior, during the investigation, as "evasive."

The presenter emphasized that respondent had admitted that (1) she failed to hold Maceno's $35,000 in escrow funds inviolate, and (2) Maceno did not authorize her to release or to use his escrow funds. She argued that respondent's unsupported claim that a portion of Maceno's deposit had been held in another attorney's trust account was incredible, noting that respondent first made this claim during the ethics hearing, that respondent had failed to produce any evidence in support of her new claim, and that, when the OAE previously had requested records related to the funds, respondent represented to the OAE that

she "had no other bank accounts" beyond what records she already had produced.

The presenter also argued that respondent's claim of entitlement to legal fees from Maceno's deposit was meritless, because respondent was only entitled to fees upon the closing of the real estate transaction, not before and not if the closing never took place, noting that respondent produced no evidence to the contrary. She stressed that respondent admitted that Maceno did not authorize her to utilize any portion of his escrow funds and, therefore, argued that respondent could not have held a reasonable belief that she was entitled to utilize the funds. The presenter argued that, even if respondent was entitled to legal fees, she had no right to unilaterally disburse such fees from escrow funds in advance of the real estate closing. She also noted that respondent did not produce a single invoice supporting her claim to $15,000 in legal fees in connection with the Nelson/Maceno matter. She further argued that neither respondent's inexperience with escrow funds nor her frustration over the possibility of not getting paid justified her unilateral taking of Maceno's escrow funds without consent.

The Parties Post-Hearing Submissions

In its post-hearing submission to the Special Master, the OAE argued that it had proven, by clear and convincing evidence, count two of the complaint – that respondent failed to safeguard Maceno's escrow funds and, further, that she knowingly misappropriated those escrow funds, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner. Specifically, the OAE argued that it was undisputed that, in June 2017, respondent received $35,000 in escrow funds from Maceno, which she improperly deposited in the MTA account, and, thereafter, used without authorization. The OAE asserted that it met its burden because respondent had admitted to her knowing misappropriation by confessing to unilaterally taking $15,000 for purported legal fees from the escrow funds, claiming an unsupported belief of entitlement.

The OAE argued that, like the attorney in In re Mason, 244 N.J. 506 (2021), respondent did not receive authorization from the owner of the funds, Maceno, or from any of the parties to the escrow arrangement, to release or to use the funds that she was duty-bound to hold in escrow. In Mason, the attorney was disbarred for releasing investors' escrow funds prior to the satisfaction of a required condition precedent, despite his assertion of a claimed belief that the investors had authorized the release of funds. Moreover, in the instant matter, unlike in Mason, Maceno specifically requested the return of his entire $35,000

deposit when the real estate transaction collapsed. As respondent admitted, she had no belief that Maceno had authorized her release or use of the funds.

Additionally, the OAE argued that respondent's claim to have held $15,000 of Maceno's escrow funds in another attorney's escrow account lacked any credibility. The OAE stressed that this new claim contradicted respondent's prior statements to the OAE about the whereabouts of the escrow funds, that the claim was first advanced at the ethics hearing, and that respondent failed to produce any evidence to corroborate her claim.

The OAE further argued that respondent's conduct was not akin to that of the attorneys in In re Konopka, 126 N.J. 225 (1991), and In re Gallo, 117 N.J. 365 (1989), wherein the attorneys were found not to have knowingly misappropriated client or escrow funds due to their "serious inattention to recordkeeping" and poor accounting practices. Here, the OAE argued, respondent knew that she was holding Maceno's $35,000 in escrow funds. Yet, she intentionally used his escrow funds to pay her claimed legal fees, without prior authorization, in addition to engaging in other improper, disbursements, which were clearly evidenced by the MTA account statements.

The OAE further argued that respondent's claim that she was unaware of her fiduciary obligations at the time of her improper use of Maceno's funds was incredible, because the OAE specifically advised her of those duties in its

October 26, 2016 correspondence during the random audit. Notwithstanding, the OAE argued that, even if respondent's claim of ignorance was to be believed, the defense must fail, because ignorance of the Rules regarding recordkeeping and the holding of escrow funds is not a defense to knowing misappropriation of funds. See In re Gifis, 156 N.J. 323, 355-356 (1998) (holding that escrowed funds cannot be disbursed without all interested parties' prior authorization and observing that ignorance of the law does not exonerate an attorney from responsibility for the knowing misuse of escrow funds).

In addition to the knowing misappropriation charge of count two of the complaint, the OAE argued that it was undisputed that respondent further failed to safeguard Maceno's funds in violation of RPC 1.15(a), as demonstrated by the MTA statements and charged in count one of the complaint, when she deposited Maceno's $35,000 in the MTA account, as opposed to an attorney trust account. Similarly, with regard to count two of the complaint, charging a violation of RPC 1.15(b), the OAE argued that it had proven that respondent violated that Rule by not only failing to return Maceno's deposit upon request, but specifically refusing to return the escrow funds, although she lacked any legitimate claim to them.

The OAE also argued that it had proven the charged violation of RPC 8.4(c) based upon respondent's June 30, 2017 communication, whereby she

knowingly misrepresented to counsel for the Bank that she held the $35,000 deposit intact, when, just four days prior, she had withdrawn $5,000 from those funds. The OAE further argued that it had proven a second violation of RPC 8.4(c), charged under count one of the complaint, based upon respondent's failure to provide complete responses to demands for information during its investigation, in addition to the knowingly false statements initially advanced by respondent regarding the Maceno and Roe funds, which false statements the OAE argued further violated RPC 8.1(a) and (b), as charged under count one of the complaint.

Regarding the final charges under count two of the complaint, the OAE argued that the record clearly demonstrated that respondent had violated 1) RPC 3.1 by filing a complaint in Essex County Special Civil Part against Maceno, for legal fees, which had no basis in law or fact; 2) RPC 3.3(a)(1) by referring to Maceno as a "lender" in that complaint, despite knowing that he was not a lender; and 3) RPC 8.4(d) because her civil suit unnecessarily wasted judicial resources.

Lastly, the OAE noted that it was the responsibility of all attorneys to maintain books and records for their financial accounts. The OAE argued that its investigation, and the documents obtained therefrom, clearly demonstrated that respondent failed to maintain her financial records, in violation of RPC

1.15(d), count three of the complaint. Additionally, the OAE noted that respondent admitted that she failed to maintain business receipts and disbursements journals.

In turn, respondent argued that her conduct did not violate the principles of Wilson or Hollendonner because she "did not knowingly misappropriate client funds nor did she misappropriate funds entrusted to her." She maintained that she was entitled to legal fees for her work related to the Nelson/Maceno matter, and that the funds she withheld from Maceno's deposit represented her compensation. She further maintained that it was verbally agreed by all involved parties that she would be paid $15,000 for her legal services.

Respondent requested that the following be considered in mitigation: 1) her reliance on the claimed verbal agreement for the compensation of her legal services; 2) her lack of disciplinary history for more than twenty years; 3) her compliance with the OAE's investigation; 4) her admission of recordkeeping deficiencies; and 5) her ultimate payment of the $15,000 owed to Maceno, making him whole; thus, in her opinion, no one was harmed by her conduct. She stressed that she is a hardworking attorney who cares deeply about her clients.

Respondent also argued that Maceno's failure to appear and testify at the ethics hearing should lend credibility to her testimony.

Respondent attempted to distinguish her conduct by discussing a 2009 disciplinary proceeding involving Maceno's counsel. In re Seradzky, 200 N.J. 230 (2009) (wherein counsel was reprimanded for committing negligent misappropriation in connection with a real estate transaction). She noted that Seradzky received a reprimand for conduct that she asserted was worse than her own.

Respondent further argued that she was the injured party in this matter. Specifically, she asserted that the $15,000 she withheld in legal fees was "a fair resolution (although not full compensation) for [her] legal fees," and "that at the end of the day she was utterly and completely wronged with having to face the ultimate outcome." Respondent argued that she should not be disbarred for her conduct, and referenced multiple cases where attorneys were not disbarred for violations short of knowing misappropriation, such as negligent misappropriation.

The Special Master's Findings

The Special Master found that respondent provided credible testimony regarding her confusion related to her financial accounts and her lack of knowledge about her obligation to maintain clear and compliant records and accounts. He also accepted, as fact, that she had not routinely handled real estate

transactions and, either seldomly or never, prior to the Nelson/Maceno matter, held client or escrow funds in trust.

Notwithstanding that preliminary determination, the Special Master found that respondent violated RPC 1.15(a), failure to safeguard funds, as charged in count two, by depositing Maceno's escrow funds in the MTA account. He further found that the OAE had proven, by clear and convincing evidence, that respondent had knowingly misappropriated Maceno's escrow funds, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner, as also charged in count two. Consequently, he concluded that she must be disbarred.

Regarding respondent's knowing misappropriation of escrow funds, the Special Master relied on the MTA account statements admitted during the disciplinary hearing. Specifically, the Special Master noted that the MTA account statements from March 29 through June 27, 2017 revealed that, at the time of respondent's deposit of Maceno's $35,000 in escrow funds, the balance of the MTA account was only $0.98 as follows:

Beginning balance, 3/29/17 (Bates No. OAE/236)		$224.98
Credits through 6/19/17 (Bates No. OAE/238)		$585.00
	Sub-total	$809.98
Withdrawals before 6/19/17 (Bates Nos. OAE/238-239)		($809.00)

Balance at time of $35,000.00 deposit $0.98

[OAE Exhibit 39.]

Thereafter, the Special Master found that respondent failed to hold Maceno's $35,000 deposit inviolate, as follows:

> Four days after the $35,000 deposit, [respondent] withdrew $5,000 in cash from the [MTA account] by means of a teller transaction. [Ex]39 at Bates No. OAE/239) Between the $35,000 deposit on 6/19/17 and the $5,000 withdrawal on 6/23/17, three other transactions appear on the bank statements: $500 deposited on 6/21/17; $100 withdrawn on 6/21/17; and $100 withdrawn on 6/23/17. An additional payment withdrawal of $165.63 is listed on the statement for 6/23/17 but after the $5,000 cash withdrawal on the same date. Thus at the time of [respondent's] $5,000 withdrawal, the balance of non-Maceno funds in the [MTA account] was at most $300.98. (see [Ex]39 at Bates OAE/238-239) The $5,000 withdrawal was, therefore, a withdrawal from the funds provided by Maceno for the real estate transaction.
>
> * * *
>
> As shown on the quarterly statements for the [MTA account] covering the summer months, the beginning balance in that account as of June 28, 2017, was $30,134.43 and the ending balance as of September 26, 2017, was $20,951.10. ([Ex]39 at Bates OAE/242) The account never had a balance of at least $35,000 during that quarter.
>
> The non-Maceno deposits into the [MTA account] for the summer 2017 quarter totaled $4,026.67 and the

> withdrawals during the same time period totaled $13,210.00. (Bates Nos. OAE/244-245)
>
> * * *
>
> Between September 27, 2017, and November 14, 2017, deposits totaling $3,713.14 were made into the [MTA account]. ([Ex]39 Bates No. OAE/248). Withdrawals during that same period totaled $4,300.
>
> [Special Master's Report, pp. 18, 20-21; OAE Exhibit 39.]

The Special Master was not persuaded by respondent's claim of entitlement to $15,000 in legal fees as justification for her unilateral withholding of the fees from Maceno's escrow funds.[8] He noted that, even if respondent was entitled to legal fees, the real estate transaction was never completed. Yet, respondent unilaterally disbursed escrow funds to herself before the closing was even scheduled to occur, via more than twenty withdrawals from the escrow funds entrusted to her as a fiduciary. He reasoned that respondent's withdrawals against Maceno's deposit undermined both her clients' prospects of a successful real estate transaction and her own chance of being compensated for legal services at the conclusion of the real estate transaction.

[8] The Special Master relied on In re Mininsohn, 162 N.J. 62 (1999), discussed in detail below.

The Special Master also rejected respondent's claim that she had maintained the $15,000 portion of Maceno's escrow funds in another attorney's trust account. He found that her claim was both wholly unsupported, observing that the MTA account statements admitted into evidence contradicted respondent's testimony that she transferred the $15,000 in three large sums.[9]

The Special Master found that respondent also violated RPC 1.15(b) by failing to promptly return Maceno's full $35,000 deposit after the real estate transaction fell through and upon Maceno's specific request that the escrow funds be returned. Indeed, respondent admitted as much.

The Special Master further found that the OAE had proven, by clear and convincing evidence, that respondent had violated RPC 1.15(d), as charged in count three of the complaint. Specifically, he found that the documentary evidence, in addition to respondent's interview and admissions, proved that she failed to comply with the recordkeeping Rules.

Additionally, the Special Master found that the record contained clear and convincing proof that respondent violated RPC 8.1(a) and RPC 8.4(c), as charged in count one of the complaint, based upon her false statements in

[9] Notably, respondent had multiple opportunities to prove this allegation by producing bank statements or the name of the attorney responsible for the claimed trust account but, instead, she specifically refused to provide either.

connection with the OAE's investigation. Specially, the Special Master noted that the record demonstrated that, in August 2018, respondent knowingly misrepresented to the OAE that the $20,000 in question was related to a transaction with her sister, despite her knowledge that those funds related to the Nelson/Maceno matter. He was unpersuaded by her excuses of nerves, fear, and stress. The Special Master found that respondent committed a second violation of RPC 8.4(c), as charged in count two of the complaint, based on her June 30, 2017 e-mail to counsel for the Bank, misrepresenting that Maceno's $35,000 was held and available for her client to purchase the Property, when respondent knew that she had already taken $5,000 of those funds just four days prior.

Lastly, as charged in count two of the complaint, the Special Master found that respondent violated RPC 8.4(d), concluding that her Special Civil Part lawsuit was prejudicial to the administration of justice and, further, an attempt to justify her misappropriation of Maceno's escrow funds.

The Special Master found, however, that the OAE had failed to prove, by clear and convincing evidence, that respondent had violated RPC 3.1 and RPC 3.3(a)(1) (charged in count two of the complaint) and, thus, recommended the dismissal of those charges. Specifically, the Special Master found that, although respondent's civil lawsuit was dismissed, the dismissal order did not include a finding that the complaint was frivolous, and the complaint did not allege that

Maceno was respondent's client or that he had agreed to pay her legal fees. Similarly, the Special Master found that, as outlined in respondent's civil complaint, she understood that Maceno was to provide the financing for the purchase of the Property, whether through a "flip" or a loan, and, therefore, respondent's reference to Maceno as a "lender" was not a knowingly false statement.

The Special Master also found that the OAE had failed to prove that respondent had violated RPC 8.1(b) (charged in count one of the complaint). Indeed, he found that the evidence proved that, overall, respondent cooperated with the OAE's investigation by promptly providing the financial records in her possession as they were requested. The Special Master also was unpersuaded by the OAE's argument that respondent further violated RPC 8.1(b) by initially claiming that the $2,000 check to Roe was for rent, finding that, although the $2,000 did not constitute rent, there was no clear and convincing evidence that respondent had knowingly lied, since she used various financial accounts to pay personal expenses and, therefore, could have initially been confused.

In its submission to us, the OAE agreed with the Special Master's conclusion that respondent should be disbarred for her knowing misappropriation of Maceno's escrow funds. The OAE's submission addressed only that misconduct.

Specifically, the OAE argued that respondent knowingly misappropriated Maceno's $35,000 deposit by failing to hold the escrow funds inviolate and, ultimately, by unilaterally taking her counsel fees from the escrow funds. The OAE noted that, in respondent's certification in connection with the civil lawsuit, she specifically acknowledged that Maceno's funds were "a good faith deposit towards the purchase price of the [P]roperty in the amount of $35,000.00." Thus, the OAE argued that there was no confusion in respondent's mind as to the purpose of the $35,000 deposit that she was required to hold, inviolate, in escrow, which she failed to do.

The OAE further argued that respondent's knowing misappropriation of Maceno's deposit was evidenced by the MTA account statements that demonstrated that the $35,000 deposit was promptly and repeatedly invaded, and that "the pattern of the activity in this account and the fact that funds were transferred to another personal account or taken as cash withdrawals or ATM withdrawals demonstrated that these disbursements were for [r]espondent's personal needs."

The OAE also noted that respondent produced no evidence to support her claim that she transferred $15,000 of Maceno's deposit from the MTA account to another attorney's trust account, despite having had multiple opportunities to do so.

In her submission to us, respondent disagreed with the Special Master's conclusion that she should be disbarred. Respondent reiterated that Maceno was not her client, and restated her contention that Maceno, the Nelsons, and Palmer verbally agreed that she would be compensated for her work in connection with the real estate transaction. She stated that she filed the lawsuit against the parties because she "strongly believed [she] was cheated." Respondent argued that she did not invade client funds, either willfully or negligently. Respondent further argued that she did not utilize "any of Maceno's funds for personal use" and that the OAE had failed to prove otherwise. She maintained that she fully cooperated with the OAE and stated that she had turned over "every relevant bank information" requested.

Moreover, respondent, once again, advanced a last-minute, novel argument. Specifically, she asserted that the $35,000 deposit provided by Maceno included her legal fees, and that there was a verbal agreement to this arrangement and to her fee of $15,000. Respondent argued that she "was led to believe that Mr. Maceno, […] as an investor […] would be paying most of [her] fee." She again argued that Maceno's failure to testify at the ethics hearing should lend credibility to her testimony.

She reiterated her request made below, asking us to weigh the same five mitigating factors and her many character letters in determining that she should

not be disbarred.

At oral argument before us, the OAE reiterated its position that respondent should be disbarred for her knowing misappropriation of escrow funds, and stressed respondent's repeated misrepresentations during its investigation as further evidence that her misconduct was deliberate. The OAE acknowledged the harshness of the recommendation that respondent be disbarred but maintained that it was the appropriate quantum of discipline for her misconduct.

In turn, respondent continued to maintain that she deposited Maceno's $35,000 in the MTA account because she did not have an attorney trust account at the time, that the MTA account was similar to an attorney trust account, and that she did not want to deposit the funds in a personal account. She emphasized that she promptly returned the escrow funds when court ordered to do so. Respondent continuously maintained that a portion of the $35,000 deposit was held in another attorney's trust account, but she still refused to provide any information related to that alleged additional account. Respondent argued that she was generally inexperienced in holding escrow funds, and that she should not be disbarred for a single, isolated incident. She stated that, throughout her legal career, she has represented an underserved population.

* * *

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 respondent knowingly misappropriated escrow funds, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner. Consequently, we recommend to the Court that she be disbarred.

The MTA account statements demonstrated, and respondent admitted, that she improperly deposited Maceno's escrow funds in the MTA account, rather than in her ATA2 – a failure to safeguard the escrow funds, in violation of RPC 1.15(a). The MTA account statements further demonstrated that respondent then failed to maintain the escrow funds, inviolate, during the pendency of the operative real estate transaction, as she was duty-bound to do. More egregiously, an examination of respondent's MTA account statements clearly and convincingly demonstrated that she spent nearly all Maceno's funds without his knowledge, consent, or authorization, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner.

Specifically, the MTA account statements prove that, on March 29, 2017, the starting balance of that account was $224.98. From April 3 to June 19, 2017, the account was credited with three social security assistance deposits of $125 each, two $100 deposits, and one $10 deposit, increasing the balance to $809.98.

From April 4 to June 19, 2017, respondent made eleven withdrawals from the account, totaling $809. Therefore, on June 19, 2017, when respondent deposited Maceno's $35,000 in escrow funds in the MTA account, it held only $0.98 of non-Maceno funds.

Two days later, on June 21, 2017, the MTA account was credited with a $500 deposit plus $0.08 in interest, resulting in an additional $500.08 of non-Maceno funds in the account. However, respondent made $100 withdrawals on June 21 and June 23, 2017, disbursed $165.63 to TurboTax on June 23, 2017, and incurred a $1 banking fee, reducing the balance of non-Maceno funds in the account to $134.43. On June 23, 2017, respondent unilaterally disbursed $5,000 from the account, purportedly for her legal fees, invading Maceno's escrow funds. On June 27, 2017, the balance of the MTA account was $30,134.43, or $4,865.57 less than respondent should have been holding inviolate on behalf of Maceno. Thus, it is clear, based on the record before us, that respondent's $5,000 withdrawal invaded Maceno's escrow funds.

Thereafter, pursuant to the second set of statements, between June 28 and September 26, 2017, an additional $4,026.67 of non-Maceno funds were deposited in the MTA account. However, respondent's withdrawals against the account totaled $13,210, including cash withdrawals and $1,500 transferred to respondent's personal account. As a result, respondent invaded approximately

$9,183.33 of Maceno's escrow funds during this period. The balance of the account on September 26, 2017 was $20,951.10, or $14,048.90 less than respondent should have been holding, in trust, for Maceno.

Lastly, pursuant to the MTA account statements for September 27 through December 26, 2017, respondent made multiple withdrawals from the account, including $20,100, which represented the partial, $20,000 return of Maceno's deposit. Ultimately, the ending balance of the account was only $8. Thus, it is clear that, at this time, respondent was not holding, inviolate, the remaining $15,000 of Maceno's escrow funds.

In total, the MTA statements from June 19 through November 14, 2017 demonstrate that the account realized $8,240.05 in non-Maceno deposits (consisting of deposits by respondent, earned interest, and social security deposits), cash withdrawals of $16,960, and a $5,750 reduction, as a result of transfers to respondent's personal account. Thus, in total, respondent invaded $14,469.95 of Maceno's escrow funds during this period. Respondent repeatedly and knowingly disbursed Maceno's escrow funds for her personal use, as evidenced by the $5,750 that was transferred to her personal account and her own admission to having used funds from the account to pay for the minor's expenses and extracurricular activities.

Assuming, arguendo, that some portion of respondent's improper MTA account disbursements were due to her negligent recordkeeping, it is still clear that many of her disbursements were intentional and, thus, constituted the knowing misappropriation of escrow funds. First, respondent failed to notify Maceno, Nelson, or any other interested party that she had deposited Maceno's funds in the MTA account, as opposed to an attorney trust account. She then failed to seek the authorization from any interested party when she intentionally withdrew $5,000 in purported legal fees from Maceno's escrow funds, a mere four days after receipt of the deposit and well before the anticipated real estate closing date. Respondent then failed to notify the interested parties of her repeated, intentional withdrawals against the escrow funds over the next several months. Moreover, clearly evidencing respondent's knowing misappropriation, on June 30, 2017, merely one week after she had withdrawn $5,000 from Maceno's deposit, respondent sent an e-mail to counsel for the Bank wherein she misrepresented that she held the entire $35,000 deposit in trust for the purchase of the Property. Thus, it is clear that respondent knew she was obligated to hold the $35,000, inviolate, for the purchase of the Property, represented to counsel for the Bank that she was doing just that, but instead she had knowingly depleted the funds.

Additionally, regardless of any verbal agreement for the ultimate payment of her legal fees, respondent admitted that Maceno never authorized her to disburse any portion of his escrow funds, prior to the scheduled closing, to pay herself a fee. Indeed, as respondent admitted and as corroborated by the preliminary ALTA settlement statement, her fees were to be paid at the time of the closing of the real estate transaction. Yet, respondent began to unilaterally withdraw her claimed, undocumented legal fees from the escrow funds a mere four days after the real estate deposit was made, well before the closing date. Stated differently, in a light most favorable to her, just like the attorney in Mason, respondent violated the condition precedent to her use of the escrow funds.

It bears mention that respondent never produced a single invoice, or any other evidence, to support her after-the-fact claims of entitlement to her 1) $5,000 fee (taken in June 2017 and inserted into the ALTA settlement statement as a debit from the buyer four months later, in October 2017), or 2) her $15,000 fee (withheld from Maceno's deposit in November 2017). Thus, we find no merit to these unsupported and incredible factual claims advanced by respondent.

Respondent's misconduct was compounded by her misrepresentations to the OAE that the $20,000 Nelson/Maceno transfer related to a business transaction involving her sister. Following that outright lie, she repeatedly and

falsely emphasized to the OAE that she never held client funds or funds that belonged to anybody else. Moreover, her later claim, first advanced at the ethics hearing – that the $15,000 balance of Maceno's deposit was held in the escrow account of another, unidentified attorney – was not only incredible and unsupported by any evidence but was clearly disproven by the MTA account statements. At the ethics hearing and again at oral argument before us, respondent refused to provide the name of the attorney responsible for the claimed escrow account or any statements related to this account.[10] However, the record clearly reflects that, on June 25, 2018, respondent transferred $15,000 from her personal checking account to her ATA2 and, thereafter, issued a corresponding check from her ATA2, payable to Maceno, in the amount of $15,000. Stated bluntly, respondent's last-ditch effort to cover up her misappropriation was unsuccessful. Thus, following our review of the record, we determine that the OAE proved, by clear and convincing evidence, that respondent repeatedly engaged in the knowing misappropriation of entrusted funds, in violation of the principles of Wilson and Hollendonner, as charged in count two of the complaint.

[10] Again, we find no merit in this unsupported factual claim advanced by respondent. Respondent had multiple opportunities to produce proof of this claim, but she failed to do so.

Additionally, RPC 1.15(a) provides that a lawyer shall hold the property of clients or third parties in his or her possession in connection with representation separate from the lawyer's own property and shall appropriately safeguard such property. RPC 1.15(b) further provides that a lawyer shall promptly deliver to a client or third person any funds or other property that he or she is entitled to receive.

Respondent violated RPC 1.15(a) by depositing Maceno's $35,000 in escrow funds in the MTA account, as opposed to an attorney trust account, where they were later invaded. We do not credit respondent's assertion that the MTA was equivalent to an attorney trust account; it is not.

Respondent also violated RPC 1.15(b) by failing to return Maceno's full deposit upon his request that she do so, or by taking other appropriate measures authorized by Court Rules in cases of disputed funds. Thus, we determine that the OAE proved, by clear and convincing evidence, that respondent violated RPC 1.15(a) for a second time, as charged in count two of the complaint.

Respondent stipulated to having violated RPC 1.15(d), count three of the complaint. Specifically, the OAE's August 8, 2018 demand audit revealed that respondent failed to maintain 1) trust receipts and disbursements journals; 2) monthly ATA2 reconciliations with client ledgers, journals, and checkbooks; 3) a ledger card identifying attorney funds and bank charges in her ATA2; 4) a

means to keep separate business and personal funds; 5) business receipts and disbursements journals; and 6) records indicating that her professional fees were deposited into her business account.

RPC 8.1(a) provides that a lawyer, in connection with a disciplinary matter, shall not knowingly make a false statement of material fact. RPC 8.4 further states that "[i]t is professional misconduct for a lawyer to: […] (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation [, and] (d) engage in conduct that is prejudicial to the administration of justice […]." Respondent clearly made knowingly false statements of material fact to the OAE, in violation of RPC 8.1(a) and RPC 8.4(c), as charged in counts one and two of the complaint, by 1) misrepresenting to the OAE that Maceno's escrow funds related to a business transaction that involved her sister; 2) misrepresenting to the OAE that Roe's $2,000 discovery funds represented her rent; and 3) misrepresenting to counsel for the Bank that she held Maceno's entire $35,000 deposit, despite knowing that she did not.

Respondent committed further misconduct by repeatedly claiming to the OAE that she did not hold any client or third-party funds during the time when she clearly was responsible for serving as escrow agent and holding Maceno's funds. As the Special Master found, respondent's claim of being stressed by the OAE's investigation does not excuse her misrepresentations to the OAE, in

violation of RPC 8.1(a) and RPC 8.4(c). Respondent's inconsistent lies and concealment only served to demonstrate her consciousness of guilt.

We agree with the Special Master that there is insufficient evidence for us to find, by clear and convincing evidence, that respondent violated RPC 3.1, RPC 3.3(a)(1), and RPC 8.1(b). However, we also find that there is insufficient evidence for us to find that respondent also violated RPC 8.4(d).

Particularly, the record does not contain sufficient proof to conclude that respondent's filing of the civil lawsuit was without a colorable, legal basis in law or fact, in violation of RPC 3.1. Respondent had a right to allege, via a civil action, the existence of a verbal arrangement for the payment of her legal fees. In terms of the disciplinary matter before us, she simply did not have a unilateral right to take those purported fees from escrow funds without authorization. Additionally, respondent's characterization of Maceno as a "lender" was not a knowingly false statement, pursuant to RPC 3.3(a)(1), because Maceno was, in fact, a partial lender for the Nelsons' desired purchase of the Property. Thus, there is insufficient evidence in the record to determine that respondent's claim was a misrepresentation. We therefore, determine to dismiss the RPC 3.1 and RPC 3.3(a)(1) charges.

The complaint also charged respondent with violating RPC 8.1(b) and RPC 8.4(d), in counts one and two of the complaint, respectively. We determine

that there is no independent basis to support those charges, because the RPC 8.1(a) and RPC 8.4(c) charges adequately address respondent's misrepresentations to the OAE. We further determine that respondent's civil lawsuit was not so frivolous as to constitute an RPC 8.4(d) violation. We, thus, dismiss the RPC 8.1(b) and RPC 8.4(d) charges.

In sum, we find that respondent violated RPC 1.15(a) and the principles of Wilson and Hollendonner (two instances); RPC 1.15(b); RPC 1.15(d); RPC 8.1(a); and RPC 8.4(c) (two instances). We determine to dismiss the charged violations of RPC 3.1; RPC 3.3(a)(1); RPC 8.1(b); and RPC 8.4(d).

The crux of this case is respondent's knowing misappropriation of escrow funds, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner, which requires that we recommend her disbarment.

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

> Unless the context indicates otherwise, 'misappropriation' as used in this opinion means any unauthorized use by the lawyer of clients' funds entrusted to him, including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom.
>
> [In re Wilson, 81 N.J. 455 n.1.]

Six years later, the Court elaborated:

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

Thus, to establish knowing misappropriation, the presenter must produce clear and convincing evidence that the attorney used entrusted 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 – that is, where the funds do not belong to the attorney's client, but another person or party has an interest in the 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.

There is no need for a formal escrow agreement to conclude that funds held by an attorney are escrow funds. See In the Matter of Lyn P. Aaroe, DRB 19-219 (February 6, 2020) (slip op. at 46) (finding that, collectively, the documents underlying the transaction functioned as an escrow agreement, as they bound the attorney to disburse the funds in a particular manner; the attorney was disbarred for his knowing misappropriation of the escrow funds); In re Aaroe, 241 N.J. 532 (2020). Rather, the relationship between the relevant parties underpins the conclusion that particular funds constitute 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 with us. In re Leiner, 232 N.J. 35 (2018).

Notably, in this case, although she argued in the alternative, respondent initially conceded both that the entirety of Maceno's deposit was escrow funds and that she had agreed to serve as the escrow agent for the Nelson/Maceno transaction.

It is well settled that an attorney who merely "borrows" deposit funds for a real estate matter but returns the full amount of the funds to his or her escrow account by the time the deal closes, has still knowingly misappropriated escrow funds. In re Blumenstyk, 152 N.J. 158 (1997) (attorney disbarred for knowingly misappropriating funds; he received $65,000 from a buyer as a deposit for a real estate deal and took $10,000 and $5,412.55 from the escrow funds without the authorization of the owner of the funds; his defense, that he had made restitution, was rejected).

Likewise, a real estate attorney is prohibited from prematurely advancing legal fees to him or herself, from escrow funds, in advance of a real estate closing. In re Mininsohn, 162 N.J. 62 (1999) (attorney disbarred, wherein he knowingly misappropriated escrow funds by representing the buyer and seller in multiple real estate transactions and taking legal fees from the funds in advance of the closings; and, like in the instant case, the attorney argued, in

mitigation, that he was inexperienced in handling a trust account).

Moreover, the burden of proof regarding defenses in disciplinary matters is on the respondent. R. 1:20-6(c)(2)(C). Such defenses must be established by clear and convincing evidence. R. 1:20-6(c)(2)(B).

Respondent's wholly unsupported claim that she maintained the disputed $15,000 of Maceno's funds in another attorney's escrow account does not come close to rising to this standard of proof. We, therefore, we reject her defense.[11] Likewise, respondent's claim that she was authorized to use Maceno's escrow funds to pay her fee is without merit. At best, under the framework of the principles of Wilson and Hollendonner, the closing served as a condition precedent to such a claimed arrangement. She, thus, was not entitled to the fee until the closing was complete, which, in this case, never occurred.

We are aware that no attorney has ever been disbarred for taking client funds on the reasonable belief of entitlement to the funds. See, e.g., In re Frost, 156 N.J. 416 (1998) (two-year suspension imposed on attorney who, among other serious improprieties, took his fee from the proceeds of his client's refinance, based on the erroneous belief that he had reached an agreement with

[11] Respondent's refusal, at the ethics hearing and at oral argument before us, to provide any information in this regard also belies her claim that she submitted all relevant bank information in this matter, as she argued in her final submission to us.

one of the client's creditors to settle an outstanding judgment). See also In re Kim, 222 N.J. 3 (2015); In the Matter of Daniel Donk-Min Kim, DRB 14-171 (December 11, 2014) (slip op. at 60-61). That doctrine does not apply to escrow funds, however, given the attendant fiduciary obligations imposed on the attorney, the presence of third parties in the relationship, and the requirement that all interested parties consent to the use of such funds.

In re Warhaftig, 106 N.J. 529 (1987) is instructive. There, the attorney routinely advanced fees to himself in real estate matters before the closings took place. The sums taken corresponded exactly to the amount of the anticipated fees. We, like the district ethics committee, credited that future claim of right, found that the invasion of funds was not knowing misappropriation, and recommended a reprimand. We noted that the attorney did not perceive his premature withdrawal of fees as a misappropriation of clients' funds, advancing to himself only monies to which he would ultimately be entitled.

However, the Court disagreed with the distinction drawn by both disciplinary tribunals. Although the Court acknowledged the harshness of the Wilson rule, particularly because, prior to these incidents, the attorney had always conducted himself in an exemplary fashion, the Court refused to carve out an exception to the Wilson rule, citing the overriding need to "preserve the confidence of the public in the integrity and trustworthiness of lawyers." Id. at

535.

Here, the record clearly established, and respondent repeatedly conceded, that Maceno's $35,000 deposit toward the pending real estate transaction constituted escrow funds entrusted to respondent's care. Indeed, she even represented to the counsel for the Bank that she held the deposit for the purchase of the Property in escrow, despite her prior invasion of the funds. The record clearly established, and respondent conceded, that she failed to hold the escrow funds inviolate. Indeed, the MTA account statements demonstrated that she promptly and repeatedly invaded the $35,000 deposit entrusted to her.

As noted above, in her August 3, 2021 submission to us, respondent claimed, for the first time, that she was entitled to a portion of Maceno's $35,000 deposit and that it was agreed by the interested parties that these funds represented both the deposit towards the pending real estate transaction and her legal fees. That new argument contradicted her prior, repeated statements conceding that the funds represented twenty percent of the purchase price of the Property and that she held the $35,000 in escrow for the real estate transaction. Indeed, twenty percent of the purchase price of $175,000 is $35,000 – the exact figure deposited by Maceno.

Respondent's last-minute, new construction of the facts erodes under scrutiny. In her October 31 and November 21, 2017 communications with

Seradzky, respondent never alleged that Maceno had agreed to pay the Nelsons' legal fees. In her June 2018 certification in connection with the civil lawsuit, respondent again never alleged that Maceno agreed to pay her legal fees on behalf of her client. Indeed, after the real estate transaction collapsed, Maceno promptly requested the return of his full deposit. In response, respondent again failed to assert an entitlement to retain any portion of those funds, from which we conclude that no claim of right existed.

Respondent's new claim is not only contradicted by her conduct toward Maceno, but also by her representations to counsel for the Bank that she held the entirety of the funds in escrow for the real estate transaction. Thus, we explicitly reject respondent's claim that Maceno's $35,000 deposit included both the $35,000, twenty percent real estate deposit and her $15,000 legal fee.

Like the attorneys in Warhaftig and Blumenstyk, respondent improperly borrowed against escrow funds. Specifically, from June 19 through November 14, 2017, respondent repeatedly invaded Maceno's escrow funds. As detailed in the calculations above, in total, respondent invaded $14,469.95 of Maceno's escrow funds, which she was duty bound to hold inviolate.

Just like the attorney in Mininsohn, respondent unilaterally took her legal fees from Maceno's real estate deposit in advance of the closing; specifically, $5,000 in June 2017 and $15,000 in November 2017. Respondent, like the

attorney in Mininoshn, also argued that she was inexperienced in holding escrow funds.

Respondent admitted that she failed to hold Maceno's escrow funds inviolate but emphasized, in mitigation, that she ultimately repaid the full balance of the escrow funds to Maceno. However, like the attorney in Blumenstyk, the subsequent replacement of escrow funds will not save her from the Wilson disbarment rule. Indeed, respondent's main defense constitutes the very "defensive ignorance" argument that the Court has repeatedly rejected over the past four decades. As the Court stated in In re Fleischer, In re Shultz, and In re Schwimer, 102 N.J. at 447 (1986), "[l]awyers have a duty to assure that their accounting practices are sufficient to prevent misappropriation of trust funds." Moreover, such a dearth of any accounting practice constitutes willful blindness. As the Court summarized in In re Pomerantz, 155 N.J. 122, 133 (1998), the attorney's systematic "juggling of funds between her personal, business, and trust accounts belies her claimed lack of knowledge that she was out-of-trust. [The attorney's] behavior demonstrates that she was aware of shortfalls in her accounts."

Moreover, the Court consistently has held that whether an attorney intends to permanently deprive a client or, by extension under Hollendonner, some other party of their money, or whether they intend to replace the funds, is irrelevant,

See In re Irizarry, 141 N.J. 189, 192 (1995), and In re Noonan, 102 N.J. at 160. As a corollary, the Court repeatedly has rejected the importance of an attorney's claimed ability to make restitution, noting that the restitution funds may fail to materialize. Id. at 134-35.

In mitigation, respondent has no disciplinary history and her misconduct involved a single matter. We note, based upon the more than thirty character references submitted and respondent's oral argument, that respondent has maintained a sound reputation both personally and professionally.

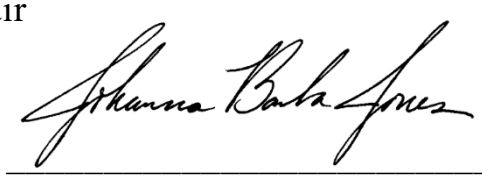
Additionally, although respondent argued, in mitigation, that she ultimately returned the full balance of Maceno's deposit, she did so after she was ordered by a trial court to return his escrow funds. At all times, respondent maintained that the $15,000 unilaterally withheld from Maceno's deposit belonged to her and that she was the aggrieved party. In our view, it is clear that respondent failed to appreciate the severity of her misconduct.

There is no aggravation to consider.

Regardless of aggravation or mitigation, because respondent knowingly misappropriated escrow funds that had been entrusted to her, disbarment is the only appropriate sanction, pursuant to the principles of Wilson and Hollendonner. Therefore, we need not address the appropriate quantum of discipline for her additional ethics violations.

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

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

By: 

Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Ana Ramona Tolentino
Docket No. DRB 21-116

Argued: September 23, 2021

Decided: December 17, 2021

Disposition: Disbarment

Members	Disbar
Gallipoli	X
Singer	X
Boyer	X
Campelo	X
Hoberman	X
Joseph	X
Menaker	X
Petrou	X
Rivera	X
Total:	9

Johanna Barba Jones
Chief Counsel