Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 23-046
District Docket No. XIV-2022-0097E

In the Matter of	:
Seth P. Levine	:
An Attorney at Law	:

Decision

Argued: April 20, 2023

Decided: July 31, 2023

Rachael Weeks appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear, despite proper notice.

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

This matter was before us 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 guilty pleas and convictions, in the United States District Court for the District of New Jersey, for one count of conspiracy to commit bank

fraud, in violation of 18 U.S.C. § 1349, and two counts of securities fraud, in violation of 15 U.S.C. §§ 78j(b) and 78ff, and 17 C.F.R. § 240.10b-5. The OAE asserted that these offenses constitute violations of the principles of In re Hollendonner, 102 N.J. 21 (1985) (knowingly misappropriating escrow funds); 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).

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 1993 and to the New York bar in 1994.

In 2016, respondent updated his status to retired with the New Jersey Lawyers' Fund for Client Protection.[1]

Effective August 17, 2022, the Court temporarily suspended respondent from the practice of law in connection with his criminal conduct underlying this matter. In re Levine, __ N.J. __ (2022). Respondent remains temporarily suspended to date.

[1] An attorney on retired status is still subject to the disciplinary jurisdiction of the Court. See In re Engelhardt, 213 N.J. 42 (2013) (attorney reprimanded for practicing law while ineligible due to retired status and for failing to cooperate with disciplinary authorities).

We now turn to the facts of this matter.

On March 18, 2021, respondent entered guilty pleas to one count of conspiracy to commit bank fraud, in violation of 18 U.S.C. § 1349, and two counts of securities fraud, in violation of 15 U.S.C. §§ 78j(b) and 78ff, and 17 C.F.R. § 240.10b-5.

At his plea hearing, respondent admitted to his role in the conspiracy and to the following facts underpinning his crimes. Respondent was the owner and managing member of Norse Holdings, LLC (Norse Holdings), an entity that controlled numerous apartment buildings through its various subsidiaries. From at least 2009 through August 2019, respondent conspired with others to fraudulently obtain loans to refinance Norse Holdings' apartment buildings. As part of his fraudulent scheme, respondent submitted a plethora of false information to lenders, including fabricated rent rolls, leases, and income and expense statements. Respondent also overstated his ownership interest in certain properties and provided lenders with "fraudulent member consents, which falsely indicated other investors' consent to refinance" the apartment buildings. Additionally, he "forged signatures on certain documents" and "direct[ed] employees to make material misrepresentations" to lenders, including false statements regarding the occupancy and condition of the

apartment buildings. As a result of the conspiracy, respondent and his co-conspirators were able to criminally acquire more than $100 million in loans.

With respect to the securities fraud charges, respondent admitted that he solicited investors to invest in the apartment buildings by providing them with false information about "the way in which [he] would use investor funds." Further, he provided the investors with false operating agreements that contained misstatements, including overstatements of his personal investment in the apartment buildings. He also violated the operating agreements that he had entered into with investors by selling off his ownership interest in certain investments, refinancing the apartment buildings, and "bringing on additional investors," all without a majority of the investors' consent. He further violated operating agreements by comingling investors' funds and using the money they had invested in one property "towards other . . . properties or to pay other investors," as evident in the following colloquy:

> [Prosecutor]: Did you commingle investor funds, in violation of the operating agreements given to investors?
>
> [Respondent]: Yes
>
> [Prosecutor]: Did you use investor funds in violation of the terms of the operating agreements, including by using such funds towards other multifamily properties or to pay other investors?
>
> [Respondent]: Yes

[1T31.][2]

In furtherance of the fraud, respondent intentionally forged the signatures of investors and potential investors on documents. Respondent stipulated that his crimes resulted in a $65 to $150 million financial loss to investors and lending institutions.

The Honorable Susan D. Wigenton, U.S.D.J., engaged in a lengthy colloquy with respondent before accepting his plea, ensuring it was knowing, informed, and voluntary. Respondent unequivocally admitted to having committed the charged crimes.

During his March 30, 2022 sentencing before Judge Wigenton, respondent, through his counsel, emphasized that he had provided assistance to people in his community and that he cooperated with the government within "weeks after the FBI raided his office." Respondent, through counsel, also claimed that he did not take money from investors to support a lavish lifestyle. Rather, he invested the money in properties and, "when the properties began to suffer there, he cut some corners." Additionally, counsel emphasized that sentencing "ha[d] been adjourned many times . . . because the loss [to the

[2] "1T" refers to the plea transcript of March 18, 2021 and "2T" refers to the sentencing transcript of March 30, 2022.

victims] ha[d] continued to be lowered since . . . his plea." In fact, the loss "ha[d] dropped more than $35 million since the day of his plea."

Respondent also addressed the District Court. He expressed deep remorse for his conduct, stating that he stood before the court as a "humbled and broken man." He offered his "sincerest apologies" to the victims present in the courtroom, and to all others affected by his crimes. Respondent denied that his conduct was motivated by greed, but instead stemmed from "unchecked pride or fear" or an "inability to admit that [his] business was having money issues." He stated that he lives with "regret and shame and guilt and humiliation every waking moment of every single day" of his life, acknowledging that he had destroyed his life.

The prosecutor, in support of substantial period of incarceration, stressed that respondent's prolonged criminal scheme impacted at least fifty victims and resulted in losses of "approximately $60 million for both the investor victims and the lender victims."

Two of the victims of respondent's criminal scheme spoke at the sentencing hearing, describing for the court the devastating impact respondent's conduct had on their lives. The first victim, who had lost over a million dollars to respondent's crime, described respondent as a "con artist"

who had targeted and befriended an identifiable group of individuals, acquired their trust, and then used that trust to deceive them.

> What ended in deceit and betrayal started out as a close [and] trusting friendship. I met [respondent] in 1999 when our family moved to the Orthodox Jewish community of Teaneck, New Jersey, and purchased a home not far from [respondent's].
> …
>
> Several years later, after our friendship was deep rooted, [respondent] invited me to invest in his real estate transactions.
> …
>
> What gave me ultimate comfort to invest, however, was that [respondent] himself committed to invest at least 50 percent in each one of his deals.
>
> That was a critical factor in my decision to invest with him, and one which we know now, in hindsight, to be completely false.
>
> [2T24-2T25.]

The second victim described for the court the physical toll that respondent's scheme had taken on her health, stemming from the stress caused by losing her savings.

For each count, Judge Wigenton sentenced respondent to concurrent, ninety-seven month terms of incarceration, emphasizing that respondent had "duped and robbed" people who trusted him, causing them "serious hardship." Judge Wigenton stated:

> . . . there are real people who have suffered loss in this fraud that the Court finds extremely moving.
>
> . . .
>
> . . . it is such a sad situation that a person that they believe and trusted gave hard-earned lifelong money, some people have had to continue working. Some people have had to forego savings for retirement. All different sorts of things.
>
> [2T45; 2T48.]

Judge Wigenton further sentenced respondent to serve a five-year term of supervised release following his incarceration.

Judge Wigenton also entered a consent judgment and order of forfeiture requiring respondent to forfeit $65 million connected to his crimes. The court reserved a determination on restitution, pending finalization of the amount owed.

In support of its motion for final discipline, the OAE argued that respondent violated RPC 8.4(b) and (c) via his criminal conduct, and that he further violated the principles of Hollendonner by knowingly utilizing investors' funds in contravention of governing operating agreements. The OAE urged that the duration and magnitude of respondent's fraudulent scheme warrants disbarment, and that, in any event, disbarment is mandated by his violation of the principles of Hollendonner.

The OAE cited numerous cases in support of its position, including In re Lurie, 163 N.J. 83 (2000) (the attorney was disbarred following a year-long scheme to defraud shareholders of residential cooperative buildings), and In re Quatrella, 237 N.J. 402 (2019) (the attorney was disbarred after a fraudulent scheme that caused actual losses in the amount of $2.7 million). The OAE argued that, in light of this precedent, respondent's fraudulent scheme of ten years and the tens of millions of losses that he caused should lead to disbarment. The OAE also argued that, when respondent violated operating agreements, he acted in the same manner as the attorney in In re Mason, 244 N.J. 506 (2021), who was disbarred for intentionally violating an operating agreement and releasing investors funds without authorization, in violation of Hollendonner. Thus, according to the OAE, there are two distinct bases for respondent's disbarment in this case.

Following a review of the record, we determine to grant the OAE's 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); and In re Principato, 139 N.J. 456, 460 (1995). Hence, the sole issue is the extent of discipline to be imposed. R. 1:20-13(c)(2); Magid, 139 N.J. at 451-52; Principato, 139 N.J. at 460.

Pursuant to RPC 8.4(b), it is misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer." RPC 8.4(c) further forbids attorneys from engaging in conduct that involves "dishonesty, fraud, deceit or misrepresentation." We conclude that respondent violated these RPCs through his conspiracy to commit bank fraud and securities fraud. Additionally, we find that he knowingly misappropriated escrow funds, in violation of the principles of Wilson and Hollendonner, by purposefully using investors' funds in contravention of the governing operating agreements, which functioned in the same way as an escrow agreement. See In re Mason, 244 N.J. at 506 (finding that the attorney knowingly misappropriated escrow funds, in violation of Hollendonner, by improperly releasing investor funds to a third-party, in violation of an operating agreement, which required the attorney to hold the funds, inviolate, pending the satisfaction of a condition precedent, and to return them to the investors in the event that sufficient funds were not raised for the investors' intended film project).

In determining the appropriate measure of discipline, we consider the interests of the public, the bar, and respondent. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." Principato, 139 N.J. at 460. 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." 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."

Here, multiple lines of New Jersey disciplinary precedent mandate respondent's disbarment.

First, respondent's criminal participation in the prolonged, fraudulent investor scheme compels his disbarment. In In re Goldberg, 142 N.J. 557 (1995), the Court 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)

Consistently, the Court has found that attorneys who commit crimes that are serious or that evidence a 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 Grant, 2022 N.J. LEXIS 1069 (2022) (disbarment for attorney who pleaded guilty to wire fraud and conspiracy to commit wire fraud; together with co-conspirators, the attorney obtained $4.8 million through fraud over a period of roughly five years; after arrest, the attorney began to cooperate with the government; although the attorney also separately misappropriated client funds, in violation of the principles of Wilson, we found that the attorney's wire fraud conviction was an independent basis for disbarment); 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 and his co-conspirator used bogus companies to dupe clients into paying thousands of dollars in advanced fees, in exchange for a promise of collateral that could be used to borrow much larger sums of money from well-known financial institutions; the clients, however, never received legitimate financial instruments that were acceptable to banks as collateral for financing; the attorney leveraged his status as a lawyer to provide a "veneer of respectability and legality" to the criminal scheme, including the use of his attorney escrow account); In re Bultmeyer, 224 N.J. 145 (2016) (the attorney knowingly and intentionally participated in a fraud that resulted in a loss of more than $7 million to 179 victims; the attorney and a co-conspirator owned Ameripay, LLC, a payroll company that handled payroll and tax withholding services for numerous public and private entities; the attorney and his co-conspirator also owned Sherbourne Capital Management, Ltd., which purported to be an investment company, and Sherbourne Financial, Ltd.; the attorney and his co-conspirator misappropriated monies entrusted to them by Ameripay's clients, as well as by Sherbourne investors, to conceal the

shortfalls in Ameripay's payroll and tax withholding accounts; the attorney and his co-conspirator agreed to divert millions of dollars to satisfy the payroll obligations of other payroll clients or to make unrelated tax payments on behalf of other clients); In re Marino, 217 N.J. 351 (2014) (the attorney participated in a fraud that resulted in a loss of more than $309 million to 288 investors; the attorney assisted his brother and another co-conspirator in the fraud, which involved the creation of a false financial history for a failing hedge fund used to persuade contributions from potential investors; the attorney also administered a fraudulent accounting firm that concealed the fund's true financial information; the attorney further prepared a phony purchase and sale agreement for the non-existent accounting firm). In re Lurie, 163 N.J. 83 (2000) (attorney disbarred after he engaged in a deliberate year-long scheme to defraud shareholders of residential cooperative buildings out of $1.8 million)

Here, like the attorneys in Grant and Klein, who were disbarred, respondent's fraud was pervasive and protracted, spanning nearly a decade and impacting dozens of victims. Further, like the attorneys in Quatrella and Marino, respondent's criminal conduct resulted in significant financial losses to his victims. Respondent's serious crimes demonstrate a lack of moral fiber

that endangered the public, the integrity of the bar, and the public's confidence in the legal profession and, consequently, must be met with disbarment.

Moreover, by pleading guilty to securities fraud, respondent admitted to having misappropriated entrusted investor funds. By failing to safeguard those funds, respondent violated the principles of In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985).

It is well-settled that "[d]isbarment is mandated for the knowing misappropriation of clients' funds." In re Orlando, 104 N.J. 344, 350 (1986) (emphasis added) (citing In re Wilson, 81 N.J. 451, 456 (1979)). In Wilson, the Court described knowing misappropriation of client trust funds as follows:

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

Six years later, the Court elaborated:

> The misappropriation that will trigger automatic disbarment under In re Wilson, 81 N.J. 451 (1979), disbarment that is 'almost invariable' [. . .] consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking. It makes no difference whether the money is used for a good purpose or a bad purpose, for the benefit of the

> lawyer or for the benefit of others, or whether the lawyer intended to return the money when he took it, or whether in fact he ultimately did reimburse the client; nor does it matter that the pressures on the lawyer to take the money were great or minimal. The essence of Wilson is that the relative moral quality of the act, measured by these many circumstances that may surround both it and the attorney's state of mind, is irrelevant: it is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment [. . .] . The presence of 'good character and fitness,' the absence of 'dishonesty, venality or immorality' – all are irrelevant.
>
> [In re Noonan, 102 N.J. 157, 159-60 (1986).]

Thus, to establish knowing misappropriation, the presenter must produce clear and convincing evidence that the attorney used trust funds, knowing that they belonged to the client and knowing that the client had not authorized him or her to do so.

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.

In this case, the record clearly establishes that the investors' funds constituted escrow funds. As we determined in In the Matter of Robert H. Leiner, DRB 16-410 (June 27, 2017) 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).

Moreover, the governing operating agreements clearly established respondent's fiduciary obligations to the investors. See In the Matter of Lyn P. Aaroe, DRB 19-219 (February 6, 2020) at 46 (finding that, collectively, the documents underlying the transaction functioned the same 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).

Here, like the attorney in Mason, respondent knowingly defrauded investors by knowingly misappropriating their entrusted funds in violation of the terms of governing operating agreements. That conduct alone mandates his disbarment pursuant to the Court's holding in Mason and the principles of

Hollendonner. Lest there be any doubt, we note that an attorney's knowing misappropriation of escrow funds does not require an attorney-client relationship. See, e.g., In re Meenen, 156 N.J. 401 (1998) (attorney disbarred for knowing misappropriation of funds stolen from an estate in respect of which he was the administrator, not the attorney), and In re McCue, 153 N.J. 365 (1998) (despite the absence of an attorney-client relationship between the attorney and the beneficiaries of a trust for which he was the trustee, the attorney was disbarred for his knowing misappropriation of trust assets).

In short, respondent's prolonged and pervasive criminal conduct, in which he defrauded his victim-investors of millions of dollars that they had entrusted to him, evidenced a total lack of moral fiber. Moreover, for his violations of RPC 8.4(b), RPC 8.4(c), and the principles of Wilson and Hollendoner, we are compelled to recommend his disbarment.

Members Petrou and Rivera were 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 Seth P. Levine
Docket No. DRB 23-046

Argued: April 20, 2023

Decided: July 31, 2023

Disposition: Disbar

Members	Disbar	Absent
Gallipoli	X	
Boyer	X	
Campelo	X	
Hoberman	X	
Joseph	X	
Menaker	X	
Petrou		X
Rivera		X
Rodriguez	X	
Total:	7	2

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