SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 23-248
District Docket No. XIV-2017-0002E

In the Matter of Stephen N. Severud
An Attorney at Law

Argued
January 18, 2024

Decided
May 2, 2024

HoeChin Kim appeared on behalf of the
Office of Attorney Ethics.

Respondent appeared pro se.

Table of Contents

Introduction 1
Facts 3
The Rento Real Estate Matter 4
The Williams Client Matter 14
The Kazi Property Tax Appeals 18
The Liguori Property Tax Appeal 23
The Grant Property Tax Appeal 25
The Kwantoro Property Tax Appeal 27
Failure to Cooperate with the OAE’s Investigation 29
Recordkeeping Deficiencies 37
The Ethics Proceeding 39
The OAE’s Amended Complaint 39
The OAE’s Motion to Amend Count One of the Complaint 40
Respondent’s Motion to Bar Evidence and Dismiss the Complaint 41
Respondent’s Motion for Summary Judgment and Other Relief 43
The Ethics Hearing 46
The Parties’ Post-Hearing Submissions 46
Respondent’s Post-Hearing Motion for Judgment and Other Relief 46
The OAE’s Summation 48
Respondent’s Summation 57
The Special Ethics Adjudicator’s Findings 63
The Rento Client Matter (Count One) 64
The Williams Client Matter (Count One) 72
The Kazi Client Matter (Count One) 73
The Liguori Client Matter (Count One) 75
The Grant and Kwantoro Client Matters (Count One) 76
Failure to Cooperate with the OAE (Count Two) 77
Recordkeeping Deficiencies (Count Three) 78
The Parties’ Positions Before the Board 79

Analysis and Discipline 81
Violations of the Rules of Professional Conduct...81
The Rento Real Estate Matter 82
The Williams, Kazi, Liguori, Grant, and Kwantoro Client Matters 91
Failure to Cooperate with Disciplinary Authorities..92
Recordkeeping Violations...93
Conclusion 94

Introduction

This matter was before us on a recommendation for disbarment filed by Special Ethics Adjudicator Sherilyn Pastor, Esq. 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) (five instances – knowingly misappropriating entrusted funds); RPC 1.15(a) (negligently misappropriating entrusted funds); RPC 1.15(a) (commingling client and personal funds); RPC 1.15(a) (failing to safeguard client funds); RPC 1.15(b) (failing to promptly deliver client funds); RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6); RPC 8.1(a) (knowingly making a false statement of material fact in a disciplinary matter); RPC 8.1(b) (failing to cooperate with disciplinary authorities); RPC 8.4(b) (five instances – committing a criminal act that reflects adversely on the lawyer's honesty, fraud, deceit, or misrepresentation); and RPC 8.4(c) (five instances – engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

For the reasons set forth below, we determine that respondent knowingly misappropriated entrusted funds and recommend to the Court that he be disbarred.

Respondent earned admission to the New Jersey bar in 1990. During the relevant timeframe, he maintained a practice of law in Parsippany and Long

Valley, New Jersey.

On March 29, 2019, respondent received an admonition for violating RPC 1.1(a) (engaging in gross neglect) and RPC 1.3 (failing to act with diligence in the representation of a client). In the Matter of Stephen N. Severud, DRB 18-419 (March 29, 2019). In that matter, respondent represented a client in a property tax appeal related to his property located in the Borough of Bernardsville (the Borough). Although respondent and the Borough attorney negotiated a potential settlement, which the client accepted, respondent failed to inform the Borough attorney that the client had accepted the offer. Respondent also ignored the Borough attorney's attempts to contact him.

The settlement offer provided that, although the 2014 and 2015 tax assessments would not change, the property tax assessments for 2016 and 2017 would be reduced, in exchange for withdrawal of the tax appeals. However, due to respondent's failure to act, the client's 2014 appeal was dismissed, and the 2016 assessment was not reduced.

Thereafter, respondent and the Borough attorney agreed to reduce the grievant's 2017 and 2018 assessments in exchange for dismissal of the 2015 tax appeal. Again, respondent failed to reply to the Borough attorney's e-mail confirming the settlement, which also required respondent's withdrawal of the 2015 tax appeal. On the advice of the Borough attorney, the tax assessor lowered

the 2017 tax assessment in accordance with the proposed settlement, but the Borough appealed that assessment. Thereafter, the client, on his own behalf, withdrew his 2015 tax appeal, and the Borough withdrew its 2017 tax appeal. Accordingly, the client ultimately realized tax savings of $13,294.58 in 2017 and $8,860 in 2018.

In imposing an admonition, we considered, in mitigation, respondent's lack of prior discipline; his expression of remorse; his willingness to discuss the return to the client a portion of the fee; and his Alcoholics Anonymous attendance. We further determined that respondent should be monitored for alcohol by the Office of Attorney Ethics.

On November 16, 2018, the Court temporarily suspended respondent for his failure to cooperate with the OAE in connection with the present matter. In re Severud, 235 N.J. 361 (2018). He was reinstated on February 22, 2019. In re Severud, 237 N.J. 35 (2019).

Facts

Respondent maintained the following bank accounts in connection with his practice of law:

- attorney trust account (ATA) and attorney business account (ABA) at TD Bank (both opened December 3, 2015 to present);

- ATA at Peapack-Gladstone Bank (opened May 28, 2013 and closed December 22, 2015);
- ABA at Peapack-Gladstone Bank (opened May 28, 2013 and closed August 4, 2016);
- ATA at PNC Bank (opened July 17, 2007 and closed April 12, 2013); and
- ABA at PNC Bank (opened March 14, 2007 and closed July 17, 2013).

On December 28, 2016, the OAE received notice from TD Bank of a $2,206.20 overdraft of respondent's ATA. The OAE's ensuing audit and investigation revealed respondent's alleged misconduct across multiple client matters, including his charged knowing misappropriation of entrusted funds.

Respondent did not dispute most of the facts underpinning the OAE's allegations. He maintained, however, that he had his clients' authorization to use their funds or, in some instances, that his inept recordkeeping practices resulted in his negligent, but not knowing, invasion of entrusted funds.

Each relevant client matter is separately addressed below.

The Rento Real Estate Matter

In 2016, David L. Rento sought to purchase bank-owned, residential real estate located in Long Valley, New Jersey. Wells Fargo Bank, N.A. (Wells Fargo) was the seller of the property.

On September 27, 2016, Premiere Asset Services (PAS), on behalf of Wells Fargo, submitted a counteroffer (the Counteroffer) to Rento's initial offer to purchase the property. That same date, David L. Rento signed the real estate contract and the Counteroffer (together, the Contract), agreeing to purchase the property from Wells Fargo for $350,000. The Contract required a $15,000 earnest money deposit from the buyer, to be applied to the sale price at closing. According to respondent, David L. Rento's son, David G. Rento, resided on the property as a tenant. David G. Rento also had been a client of respondent and, according to respondent, initially had sought to purchase the foreclosed property but was unable to obtain a mortgage commitment.

The Contract, which respondent admittedly received, variously referred to the buyer as "David Rento" and "David L. Rento." Each page of the Contract contained the handwritten initials "DR." "Exhibit A" to the Contract, which required the buyer's "Full Legal Name" identified the buyer as "David L. (Louis) Rento," with a date of birth of July 11, 1941. Further, on page three, the Contract listed the buyer's e-mail address as dlrento@yahoo.com.

The initial real estate contract, which was superseded by the Contract, had identified the buyer as "Dave Rento," but also identified "Dave Rento" as a tenant of the property, with monthly rental payments of $1,500, pursuant to a three-year lease. The Contract, signed by David L. Rento on September 27,

2016, was not signed by Wells Fargo until December 14, 2016. There is no dispute that, ultimately, David L. Rento (again, the father) purchased the property.

On September 22, 2016, Roberta L. Rento (David L. Rento's wife) initiated a wire transfer of $10,000 to respondent's TD Bank ATA.[1] According to TD Bank's records, the transfer was identified as "WIRE TRANSFER INCOMING, MSB FBO [for the benefit of] David L. Rento" and was deposited in respondent's TD Bank ATA on October 3, 2016.

On October 6, 2016, respondent advised the seller's realtor, Anthony Crivello, in writing, that he would hold the buyer's deposit in his "non-interest bearing trust account." In that same letter, respondent also noted that Crivello held the buyer's initial $5,000 deposit, confirming that respondent had "received a wire transfer from Mr. Rento and have $10,000 in my [ATA] on this matter."

Respondent also prepared an undated rider to the Contract, incorporating the initial real estate agreement, the Counteroffer, and collectively referring to all three documents as "the contract." Respondent denied knowing the date that he prepared the rider. The rider clarified that the buyer's name was amended

[1] Respondent testified that he began representing David L. Rento on October 3, 2016. He further admitted that he provided Rento with his ATA information to allow Rento to wire $10,000 to his trust account. Subsequently, however, as detailed below, respondent denied having represented Mr. Rento.

across all documents comprising the contract to "David L. Rento," and, in the event of any ambiguity or inconsistency, provided that the rider shall govern. Further, the rider recited a closing date of November 30, 2016, to take place at respondent's law office. Additionally, the rider stated that respondent would hold the buyer's deposit in his "attorney's non-interest bearing trust account." The seller of the property did not sign the rider.

According to his client ledger card, respondent described the $10,000 buyer's deposit as follows:

> 10/3 – Wire In $10,000
> Closing Deposit $7,500
> Bill Payment $2,500
> 10/3 – Bill Payment to SNS
>
> [ExOAE5.][2]

Thus, on the same date as the wire transfer (October 3, 2016), respondent attributed to himself $2,500, which he described as "Bill Payment to SNS," purportedly representing his legal fee for work that he had performed for David G. Rento and his business partner, Scott Savastano, which work was unrelated

[2] "ExOAE" refers to the OAE's exhibits entered into evidence during the ethics hearing.
"IT" refers to the transcript of the hearing held on August 23, 2021.
"OAES" refers to the OAE's November 15, 2020 written summation.
"RS" refers to respondent's November 15, 2020 written summation.
"SEARpt" refers to the September 6, 2023 report of the Special Ethics Adjudicator.

to the real estate transaction. On October 4, 2016, respondent also withdrew $1,000, in cash, from his TD Bank ATA.

On October 28, 2016, the initial closing date, respondent should have held at least $10,000 in his ATA, representing the buyer's earnest money deposit he was required to hold in escrow. Instead, on that date, respondent's ATA balance was $9,343.25, representing a shortage of $656.75 as to Rento's escrow. On November 30, 2016, the date respondent had suggested as a closing date for the real estate transaction, his ATA balance was $4,618.25, representing a shortage of $5,381.75 as to Rento's escrow alone.

Between October 3 and December 30, 2016, respondent's TD Bank ATA balance fluctuated between a high of $20,145.54 and a low of $4,618.25, despite his obligation to hold $10,000 in escrow, inviolate, for the Rento real estate transaction. On November 14, 25, and 30, 2016, respectively, respondent issued the following checks from his ATA toward his personal debt obligations:

- $750 payable to respondent's lawyer, Jon Stone, Esq. (check no. 159);
- $1,000 "deposit" on a car, payable to Salerno Duane Infiniti (check no. 160); and
- $4,000, payable to himself, with the notation "move." (check no. 161).

On November 30, 2016, when check number 161 posted to his ATA, respondent's ATA balance was $4,618.25. Neither Wells Fargo nor the realtor

representing Wells Fargo in this transaction authorized respondent to use any portion of the $10,000 he was holding in escrow for the real estate transaction.

In December 2016, Colleen Ryan-Meyer, Esq., replaced respondent as successor counsel representing David L. Rento.

On December 13, 2016, respondent's TD Bank ATA balance was $7,693.80. On December 19, 2016, respondent deposited two checks, totaling $2,500, in his TD Bank ATA, bringing his balance to $10,228.80.

According to his client ledger card, on December 14, 2016, respondent designated the deposit as an "additional deposit" of $2,500. Respondent then issued an ATA check, dated December 14, 2016, in the amount of $10,000, payable to Ryan-Meyer. However, on December 20, 2016, TD Bank rejected the check for insufficient funds.

Subsequently, on December 28, 2016, respondent issued a second ATA check, payable to Ryan-Meyer, which she successfully negotiated.

Based on the foregoing, the OAE asserted that respondent knowingly misappropriated client and escrow funds, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner. Further, the OAE alleged that respondent violated RPC 8.4(b) by committing a crime, contrary to N.J.S.A. 2C:21-15 ("A person commits a crime if he applies or disposes of property that has been entrusted to him as a fiduciary, or property belonging to or required to

be withheld for the benefit . . . of a financial institution in a manner in which he knows is unlawful and involves substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted”), and RPC 8.4(c).

Respondent repeatedly denied having misappropriated entrusted funds, although his positions in this respect varied.

Initially, in his February 10, 2017 written explanation of the overdraft to the OAE, respondent claimed there was “an issue of timing between the deposit and the date of the check, caused by [his] health issue and being admitted to the hospital.” He admitted, however, that the funds deposited with him for the benefit of David L. Rento were “client funds,” but maintained that they “were never used for anything but the real estate closing.” He asserted that $7,500 of those funds always remained intact and were never used for anything other than his “client’s transaction.” Specifically, respondent asserted:

> This matter was referred to your office for 2 reasons. First, I dated the Check #165 when I wrote it, the day I was admitted to the hospital; and second, a delay by my office in depositing in my Trust Account the final portion of the real estate closing deposit. These actions did not affect the closing, no client funds were ever used for any purpose other than the closing and the funds were wired to my backup attorney the day that my office received notice of what occurred.
>
> . . .

> TD Bank's letter shows there was $7,693.80 in my Trust Account at the time in question. These monies were a partial deposit on a client's real estate closing ($7,500) and my firm's money ($193.80). The total deposit that I was to hold on the closing was $10,000.00. I had received $7,500.00 previously and on December 14, 2016, I received the final $2,500.00 of that $10,000 deposit….
>
> [ExOAE55.]

During his April 12, 2017 interview with the OAE, respondent admitted that he did not, as a practice, promptly withdraw his earned legal fees from his ATA. Rather, he explained that he routinely deposited funds in his ATA and paid business expenses directly from that account or would write a check payable to himself. The OAE reminded respondent that his legal fees were required to be deposited in his ABA, rather than his practice of paying business expenses from his ATA. (Id.). Respondent also admitted to the OAE that he failed to reconcile his client ledger card with his bank records. Last, respondent admitted that he had filed for bankruptcy in 2012 or 2013.

In his October 18, 2017 submission to the OAE, he maintained that "[a]fter conversations with Mr. [Scott] Savastano and Mr. Rento [owners of Full Circle Tire Recycling], it was my understanding that $2500 from the deposit on the real estate was to be paid in full satisfaction of the outstanding bill [owed to respondent by his client Full Circle Tire Recycling in another matter]. In

subsequent conversations, it became clear to me that there was a misunderstanding on that issue, and I replaced the money with those checks."

However, the OAE's review of respondent's original client file for David G. Rento's and Scott Savastano's company revealed no correspondence between either David G. Rento or Savastano with respect to the use of the $10,000 buyer's deposit – which had been advanced by David L. Rento – to pay an unrelated, outstanding legal bill.

During his second interview with the OAE, on December 18, 2018, respondent further claimed that he thought David G. Rento, the son, had authorized him to apply $2,500 of the buyer's deposit toward legal fees that David G.'s company owed respondent. Respondent informed the OAE, however, that he later learned that his understanding "was inaccurate, and that's why I put the money back," referring to his December 14, 2016 deposit of $2,500 to his TD Bank ATA. Respondent admitted that none of these conversations were memorialized in writing. Further, respondent claimed to the OAE that "Dave, Jr." had given him the $10,000 real estate deposit by way of check.[3] Specifically, he stated:

> OAE: … so you said the father, on behalf of the son, gave you 10,000?

[3] As previously noted, respondent's statement to the OAE in this respect is contradicted by his TD Bank ATA records, which clearly illustrate that the deposit was effectuated via wire transfer, initiated by Roberta L. Rento "FBO [for the benefit of] David L. Rento," who is Roberta's husband.

> Respondent: I believe it came from the father, ultimately.
>
> OAE: Okay.
>
> Respondent: But Dave, Jr. gave it to me.
>
> OAE: So Dave, Jr. would have said – you would have talked to about asking to use the deposit?
>
> Respondent: Dave, Jr. borrowed the money from his father –
>
> OAE: Okay.
>
> Respondent: -- and gave me the money as if it was his.
>
> OAE: Okay. But he gave you a check – did he give you a check[?]
>
> Respondent: Yes.
>
> ….
>
> Respondent: -- if you go back to December – October 3rd, there should be a check.
>
> [ExOAE17pp45-47.]

In addition, respondent maintained that, because Wells Fargo had not yet signed the Counteroffer when he had accepted the $10,000 buyer's deposit (October 3, 2016), there was no valid contract and, thus, no requirement that he hold the $10,000 in escrow and, further, no obligation that he obtain the bank's permission before he paid himself $2,500 from the funds.

During the ethics hearing, respondent reiterated his position that he previously had represented David G. Rento, the son, who had wanted to purchase the foreclosed property but was unable to obtain a mortgage commitment. Respondent again claimed that David G. Rento had authorized him to use a portion of the $10,000 deposit ($2,500) to pay himself outstanding legal fees that he and his business partner owed in an unrelated matter. He later explained that he had misunderstood that Rento (the son) had authorized his use of the $2,500 and, thus, he later replenished the account.

Respondent also maintained that there was no valid contract between David L. Rento and Wells Fargo until, at the earliest, December 14, 2016, when Wells Fargo signed the Counteroffer. Until such time, he asserted, Wells Fargo had no authority to direct that the money be held in escrow until it had signed the Counteroffer. By December 14, 2016, respondent had been replaced by successor counsel.

The Williams Client Matter

In 2015, respondent represented Gary and Tasula Williams in the sale of their residential property located in Rockaway Township, New Jersey. On November 3, 2015, Christopher Marks; Paige Kotteles; Barry Kotteles; and

Clare Kotteles (collectively, the buyers) executed a real estate contract for the purchase of the Williams' property.

In accordance with the terms of the sales contract, the buyers issued two checks, both dated November 13, 2015 and in the amount of $5,000, payable to respondent's ATA. On November 19, 2015, respondent deposited both checks, totaling $10,000 and representing the buyers' earnest money deposit, in his Peapack Gladstone ATA. The real estate closing was scheduled to take place on January 20, 2016.

On December 1, 2015, respondent's Peapack Gladstone ATA balance was $10,000.16.

On December 3, 2015, respondent opened a new ATA with TD Bank and deposited $9,000, via check number 1165, issued from his Peapack-Gladstone ATA. On December 4, 2015, when check number 1165 had cleared, respondent held a balance of $1,000.16 in his Peapack-Gladstone ATA. Respondent then paid his rent ($625), his Capital One credit card ($150), and himself ($225.16), thereby zeroing out the Peapack-Gladstone ATA balance.

After his initial, $9,000 deposit in his new TD Bank ATA, respondent deposited the following legal fees:

- December 14, 2015 - $874.55 legal fees from the Tarzan client matter;
- December 14, 2015 - $1,542 legal fees from the Estate of John Paschal matter;

- December 17, 2015 - $13,383.63 legal fee from the Caudill client matter.

The buyers were represented by Keith Paterson, Esq. Paterson did not authorize respondent to use any portion of his clients' deposit in advance of the closing. Likewise, neither Gary nor Tasula Williams (the sellers) authorized respondent to use any portion of the deposit prior to the real estate closing. Thus, respondent created an escrow shortage of $1,000, which persisted until December 14, 2015, when he replenished his ATA with other earned legal fees. On January 21, 2016, respondent issued a check from his TD Bank ATA, payable to Gary and Tasula Williams, in the amount of $8,982. On the same date, respondent issued a check, payable to Paterson's trust account, in the amount of $1,018.

The OAE alleged that respondent had knowingly misappropriated the escrow funds, in violation of RPC 1.15(a), and the principles of Wilson and Hollendonner, by failing to hold the buyers' $10,000 deposit, inviolate, instead transferring $9,000 to a new ATA and spending the remaining $1,000 that remained in his Peapack-Gladstone ATA for his personal expenses. Further, by this same misconduct, the OAE alleged respondent had violated RPC 8.4(b) and RPC 8.4(c).

Respondent consistently maintained that his then bookkeeper, who is his mother-in-law, had mistakenly prepared the Peapack-Gladstone ATA check, in the amount of $9,000, for respondent's signature, which he used to open his new TD Bank ATA. Specifically, Catherine Irene Mcerlain served as respondent's only bookkeeper from 2005 to 2016. Mcerlain was not employed by him, but rather performed the work as a "volunteer" and was reimbursed by respondent with lunch and gas money.

According to respondent, he opened the new TD Bank ATA when he moved his law office from Long Valley to Parsippany because there were no Peapack branch offices near his new law office. When he learned of the error, respondent claimed he promptly deposited the funds necessary to correct the error and, in mid-January 2016, the real estate closing took place as scheduled. Although he admitted that the responsibility rested with him, he nonetheless claimed that he would have transferred the full $10,000 if his bookkeeper had correctly informed him as to the balance in the Peapack ATA.

The Kazi Property Tax Appeals

Respondent represented Mahazabeen Kazi[4] in connection with two property tax appeals regarding properties located in Boonton and Montville, New Jersey.

On April 7, 2010, respondent executed a fee agreement with Mahazabeen regarding the Boonton tax appeal. Similarly, in 2013, respondent executed a fee agreement with Mahazabeen regarding the Montville tax appeal. Both agreements reference the clients as both Mahazabeen and Khusbu Kazi; however, only Mahazabeen signed the agreements. Neither agreement refers to Mahazabeen's husband, Jamaluddin Kazi. Respondent admitted, however, that both Mr. and Mrs. Kazi were his clients.

According to the fee agreements, respondent's legal fee was contingent upon the success of the property tax appeals. For the Boonton property tax appeal, respondent charged a one-third contingent fee based upon the reduction in property taxes for each year under appeal. For the Montville property, he charged a fifty-percent contingent fee based on any reduction in property taxes for each year under appeal. Both tax appeals were successful. However,

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[4] The fee agreements refer to the clients as Mahazabeen and Khusba Kazi, who are mother and daughter. Only Mahazabeen signed the fee agreements. There was confusion during the ethics proceeding whether Khusba was the name of Mahazabeen's husband. However, the OAE clarified, by way of affidavit, that Jamaluddin Kazi was Mahazabeen's husband. <u>See</u> Affidavit of Justin Mendyk dated August 7, 2020.

respondent failed to remit to the Kazis the amount contemplated by the fee agreements.

Specifically, the Town of Boonton issued a check dated May 2, 2011, payable to "Stephen N. Severud, Esq., P.C.," in the amount of $2,108.21. On May 9, 2011, respondent deposited this check in his PNC Bank ABA.

Pursuant to the terms of the fee agreement, respondent was entitled to $702.74 in fees, plus expenses of $403, for a total of $1,105.74 in connection with the Boonton tax appeal. The Kazis were entitled to $1,002.47. Instead, on May 13, 2011, respondent issued an ABA check from PNC Bank in the amount of $208.92, payable to "Mr. Mrs. Mahazabeen."

Although the check in the amount of $208.92 ultimately was negotiated, the clients denied having received this check.

Similarly, the Township of Montville issued a property tax refund via check dated January 12, 2016, payable to respondent, in the amount of $4,436.51. On January 22, 2016, respondent deposited this check in his PNC Bank ABA.

Pursuant to the terms of the fee agreement, respondent was entitled to receive $2,218.25 in fees, plus expenses of $234.40, for a total of $2,452.65 for the services he rendered in connection with the Montville tax appeal. The clients were entitled to receive $1,983.86.

Respondent failed to disburse funds to the Kazis related to the Montville matter until after the OAE had commenced its investigation.

During his December 12, 2018 interview, respondent informed the OAE that he had not disbursed any of the Montville tax refund to the Kazis, at the request of "Mr. Kazi" who, according to respondent, stated he was "contemplating going through bankruptcy and asked [respondent] not to send him his money." Respondent claimed that Mr. Kazi never called him back or provided an update and, further, that respondent had never memorialized his conversation with Mr. Kazi in writing, telling the OAE that he was concerned Mr. Kazi potentially was committing bankruptcy fraud.[5] Respondent claimed that he simply held onto the money.

A few days after his interview with the OAE, on December 17, 2018, respondent issued two checks from his TD Bank ATA, payable to "Mr. & Mrs. Kazi," in the amounts of $1,002.47 and $1,983.86, for the Boonton and Montville tax appeals, respectively. According to his cover letter addressed to the Kazis, respondent claimed that the "error" was discovered while he was "working with the State on an audit of [his] Trust Account." Further, with respect to the Boonton tax appeal, respondent stated:

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[5] The OAE auditor testified that his search of PACER revealed that none of the Kazis had filed for bankruptcy.

Part of the refund that I sent to you back in 2011 was apparently stolen before it was delivered to you. In addition, due to an inadvertent typographical error in my firm's records, I discovered that you were not provided with the full refund to which you were entitled.

[ExOAE40.]

A review of respondent's TD Bank ATA records during the relevant period reveal that his balance repeatedly dropped below the amount he was required to hold, inviolate, on behalf of the Kazis. Specifically, between February 2016 and December 2018, when he disbursed full payment to the Kazis, respondent should have held $2,996.33 ($1,002.47 for the Boonton tax appeal and $1,993.86 for the Montville tax appeal). Instead, respondent's ATA balance fell below that amount during the following months:

MONTH	BALANCE
February 2016	$553.68
March 2016	$253.68
April 2016	$11.13
August 2016	$1,955.10
September 2016	$2,195.34
December 2016	$158.80
January 2017	$158.80
March 2017	$913.22
April 2017	$913.22
May 2017	$788.22
September 2017	$353.22
November 2017 – March 2018	$1,128.22
April 2018	$993.22
May 2018	$1,025

July and August 2018	$1,443.26

Based on the foregoing, the OAE alleged that respondent knowingly misappropriated client funds, in violation of RPC 1.15(a) and the principles of Wilson, by failing to disburse the Boonton and Montville tax appeal refunds due to the Kazis, and further, by repeatedly allowing his ATA balance to drop below the amount he was required to hold, inviolate, on the Kazis' behalf. By this same misconduct, the OAE asserted that respondent violated RPC 8.4(b) and RPC 8.4(c).

Further, with respect to the Boonton tax appeal, the OAE alleged that respondent had negligently misappropriated client funds, in violation of RPC 1.15(a), by allowing the refund check he issued to the Kazis to be cashed by an unknown person, and had commingled client funds, in violation of RPC 1.15(a), by depositing the Boonton tax refund check in his ABA, rather than his ATA.

Moreover, in connection with the Montville tax appeal, the OAE alleged that respondent had violated RPC 8.1(a) by misrepresenting to the OAE that Mr. Kazi had directed him not to send his portion of the tax appeal check based on his intent to file for bankruptcy.

Respondent denied having committed any misconduct in connection with his handling of the Kazis' property tax appeals. Rather, he testified that he had withheld money from the Boonton property tax appeal based on legal fees he

was owed in connection with other legal services. In support, he produced an unsigned fee agreement, dated December 8, 2010, describing services related to a foreclosure action captioned <u>One West Bank, FSB v. Kazi</u>.

With respect to the Montville tax refund, respondent admitted that he retained the proceeds but claimed he had been authorized to do so by Mr. Kazi because of his intent to potentially file for bankruptcy, also citing his own bookkeeping errors.

<u>The Liguori Property Tax Appeal</u>

On March 28, 2012, Thomas Liguori retained respondent in connection with a property tax appeal related to a Hopatcong, New Jersey property. Pursuant to the terms of the written fee agreement, respondent was entitled to a fifty-percent contingent fee based on any reduction in property taxes for each year under appeal. The tax appeal was successful.

Specifically, the Borough of Hopatcong issued a check dated August 30, 2016, payable to "Stephen N. Severud, Esq.," in the amount of $1,717.54, on Liguori's behalf. On September 2, 2016, respondent deposited the check in his TD Bank ATA.

Pursuant to the terms of the fee agreement, respondent was entitled to $858.77 in fees, plus expenses of $77.20, for a total of $935.97 in connection

with Liguori's tax appeal. Liguori was entitled to $781.57. Respondent did not immediately disburse to Liguori the tax refund.

On December 12, 2018, when the OAE asked respondent if he had disbursed to Liguori his share of the tax refund, respondent claimed that he had performed additional work for Liguori in connection with a personal injury matter and, thus, was uncertain whether Liguori was owed any of the tax refund proceeds. Notably, however, respondent's written fee agreement with Liguori did not expressly describe any additional work.

On December 18, 2018, five days after the OAE's interview and more than two years after having received the refund, respondent issued a check from his TD Bank ATA, payable to Liguori, in the amount of $781.57. In the accompanying letter, respondent informed Liguori that he had been working with the OAE in connection with his audit and the "error" was discovered and, due to that "inadvertent typographical error," he previously had not provided Liguori with the full refund to which he was entitled.

Liguori passed away before the OAE was able to interview him as part of the investigation.

Based on the foregoing, the OAE alleged that respondent had failed to safeguard client funds, in violation of RPC 1.15(a), and failed to promptly disburse funds to Liguori, in violation of RPC 1.15(b).[6]

Respondent maintained, during his interview with the OAE, that he had performed additional legal work for Liguori and had retained the tax refund toward payment of those outstanding legal fees.

Further, during the ethics hearing, respondent testified that he had paid Liguori "in an effort to resolve this matter" with the OAE, having been advised during his audit that it would behoove him to pay amounts still owed to clients and to provide proof to the OAE. Respondent maintained, however, that he did not actually owe to Liguori the money he had paid him because Liguori previously had authorized him to use the proceeds to cover legal fees in connection with his handling of a reckless driving citation.

The Grant Property Tax Appeal

In May 2016, respondent successfully handled a real estate tax appeal on behalf of John Grant, who was one of five property owners in Mount Olive

[6] In its amended complaint, the OAE had charged respondent with knowing misappropriation of client funds in connection with the Liguori client matter; however, on November 23, 2020, the Special Ethics Adjudicator granted the OAE's motion to amend the complaint regarding the knowing misappropriation charge, instead charging respondent with failure to safeguard and failure to promptly disburse client funds, in violation of RPC 1.15(a) and (b).

Township who had retained respondent to handle their property tax appeals. Specifically, the Township of Mount Olive issued two checks, dated May 17, and May 31, 2016, in the amounts of $20,550.66 and $3,615.90, respectively, payable to "Stephen N. Severud, Esq." On June 10, 2016, respondent deposited the checks in his TD Bank ATA.

According to his legal bill, respondent's appeal was successful and yielded Grant a tax savings of $4,212.37 for a three-year period. Respondent was entitled to a fifty-percent contingent fee and, according to the legal bill, Grant was entitled to a tax appeal refund totaling $3,073.31. The actual tax savings, however, was $5,212.37. Accordingly, an additional sum of $833.33 was owed to Grant.

On December 18, 2018, following his interview with the OAE, respondent issued a check from this TD Bank ATA, payable to Grant, in the amount of $833.33. In his accompanying cover letter, respondent stated that he had been "working with the State on an audit of my Trust Account and the error was discovered."

As reflected in the above chart, between June 2016 and December 2018, respondent's TD Bank ATA balance repeatedly dropped below the amount ($833.33) he was required to hold on Grant's behalf.

Based on the foregoing, the OAE alleged that respondent knowingly misappropriated client funds, in violation of RPC 1.15(a) and the principles of Wilson. By this same misconduct, the OAE asserted that respondent also had violated RPC 8.4(b) and RPC 8.4(c).

Respondent denied any misconduct, instead attributing the mistake to a clerical or typing error when he prepared the legal bills.

When the OAE asked respondent about his financial stability at the time, he replied "[m]ediocre" but denied that he would "consciously [have] taken money from a client."

The OAE investigator admitted, under cross-examination, that he had no evidence that the underpayment was anything other than a typographical error.

The Kwantoro Property Tax Appeal

In May 2016, respondent successfully handled a real estate tax appeal on behalf of Joshua Kwantoro who, like Grant, was one of five property owners in Mount Olive Township who had retained respondent to handle their property tax appeals. Specifically, the Township of Mount Olive issued two checks, dated May 17, and May 31, 2016, in the amounts of $20,550.66 and $3,615.90, respectively, payable to "Stephen N. Severud, Esq." On June 10, 2016, respondent deposited the checks in his TD Bank ATA.

According to his legal bill, respondent's appeal was successful and yielded Kwantoro a tax savings of $6,135.11 for a three-year period. Respondent was entitled to a fifty-percent contingent fee and, according to the legal bill, Kwantoro was entitled to a tax appeal refund totaling $4,675.59. The actual tax savings, however, was $7,135.11. Accordingly, an additional sum of $833.33 was owed to Kwantoro.

On December 18, 2018, after his interview with the OAE, respondent issued a check from this TD Bank ATA, payable to Kwantoro, in the amount of $833.33. In his accompanying cover letter, respondent stated that he had been "working with the State on an audit of my Trust Account and the error was discovered."

As reflected in the above chart, respondent's TD Bank ATA balance repeatedly dropped below the amount ($833.33) he was required to hold on Kwantoro's behalf.

Based on the foregoing, the OAE alleged that respondent knowingly misappropriated client funds, in violation of RPC 1.15(a) and the principles of Wilson. By this same misconduct, the OAE asserted that respondent also had violated RPC 8.4(b) and RPC 8.4(c).

Respondent denied any misconduct, instead attributing the mistake to a clerical or typing error.

Failure to Cooperate with the OAE's Investigation

On December 28, 2016, TD Bank notified the OAE that respondent had overdrawn his ATA in the amount of $2,206.20. On January 3 and January 27, 2017, the OAE notified respondent of the overdraft and requested a written explanation with supporting documentation, first by January 17, and, subsequently, when respondent failed to reply, by February 3, 2017.

On February 10, 2017, respondent replied to the OAE, explaining that his delayed response was the result of his recent, month-long hospitalization. As detailed above, respondent attributed the overdraft to "an issue of timing between the deposit and the date on the check," that were was "no misuse of client funds," and that the "client funds were never used for anything but the real estate closing." Further, respondent stated:

> TD Bank's letter shows there was $7,693.80 in my Trust Account at the time in question. These monies were a partial deposit on a client's real estate closing ($7,500) and my firm's money ($193.80). The total deposit that I was to hold on the closing was $10,000. I had received $7,500.00 previously and on December 14, 2016, I received the final $2,500.00 of that $10,000.00 deposit. I directly my office to deposit the $2,500.00 that day, but the $2,500.00 was not deposited until Friday, December 16, 2016 and on Monday, December 19, 2016, Check #165 was not honored by TD Bank.
>
> [ExOAE55.]

Respondent further explained that, on December 9, 2016, he received a motor vehicle citation for driving under the influence of alcohol, which "finalized my decision that I could not overcome the alcohol addiction without additional help." Consequently, while he contacted in-patient rehabilitation facilities, he arranged for Ryan-Meyer, a personal and professional friend, to assume the representation of four remaining client files.

On February 23, 2017, the OAE directed respondent to produce the following additional information (for the months of November and December, 2016, and January, 2017), no later than March 9, 2017:

- Monthly ATA bank statements;
- Monthly three-way ATA reconciliations;
- Client ledger cards for those clients whose funds respondent maintained in his ATA during the audit period.

Respondent failed to reply. Accordingly, on March 21, 2017, the OAE again directed respondent to produce the previously requested documentation and information no later than March 27, 2017. The OAE warned that it would seek respondent's suspension if he failed to reply.

On March 22, 2017, in reply to the OAE, respondent produced some, but not all, of the requested documents for his TD Bank ATA.

On April 12, 2017, the OAE conducted respondent's demand audit. At that time, respondent was represented by counsel. According to the OAE, this

interview related to the overdraft of respondent's TD Bank ATA and his recordkeeping practices.

The OAE investigator testified that, during the April 12, 2017 demand audit, the OAE had explained to respondent that he was required to disburse his legal fees to his ABA prior to paying his own personal expenses, rather than paying those expenses directly from his ATA. The OAE described respondent's practice as "active commingling," which means he would leave his legal fees in his trust account and pay his personal expenses directly from his ATA. During his direct examination, the OAE auditor explained:

> Q: Do you recall if Mr. Severud understood why [personal expenses] should not have been made out of the trust account?
> A: I believe so. I mean, we – we did discuss it and he seemed to acknowledge the proper way of doing it.
>
> Q: And the only way Mr. Severud was able to pay those, we'll call them personal expenses, out of his trust account, was because he left his legal fees in his trust account?
>
> A: That's correct.
>
> Q: Do you recall the – do you recall how long Mr. Severud left his fees in his trust account?
>
> A: What Mr. Severud was doing was more like the active commingling, so he would pay personal expenses from the – the commingled legal fees and he would do it – he would do it that way instead of leaving it in for extended periods of time.
> [1T59-1T60.]

On June 5, 2017, the OAE provided respondent with an attorney bank account disclosure form that required him to identify all bank accounts associated with his law practice for the audit period, which had been expanded to February 2016 through May 2017. Respondent failed to reply by the June 16, 2017 deadline. However, on June 30, 2017, the OAE granted respondent's request for an extension and set a new deadline for July 5, 2017. Again, respondent failed to reply by the deadline.

Subsequently, on July 18, 2017, the OAE filed a petition with the Court seeking respondent's temporary suspension due to his failure to fully cooperate, emphasizing the questionable transactions concerning his ATA. According to the supporting affidavit, the OAE had identified evidence of commingling of respondent's personal funds in his trust account; checks payable to respondent in round amounts; cash withdrawals; and payments to a car dealership and towards his daughter's college tuition.

Respondent opposed the OAE's motion and, on July 24, 2017, produced to the OAE two boxes of documents containing: (1) the attorney bank account disclosure form; (2) a list of client accounts for the period February to June 2017; (3) three-way reconciliations of his ATA for the period February to June 2017; (4) TD Bank ATA statements for the period February to June 2017, including canceled checks; (5) and various client files.

On July 28, 2017, the OAE acknowledged receipt of respondent's production, but directed respondent to produce, no later than August 11, 2017, certain records that were not included in his July 25, 2017 production. Specifically, in addition to several missing client files, respondent had failed to produce his monthly three-way reconciliations for all trust accounts for the period February 2016 through January 2017; ATA and ABA receipts and disbursements journals for April and May 2017; and ABA bank statements and associated records.

On September 18, 2017, more than a month after the deadline set by the OAE, respondent produced some, but not all, of the outstanding documents.

Accordingly, on November 3, 2017, the OAE informed the Court that, although respondent was not in full compliance, it was withdrawing its pending motion for his temporary suspension. Further, the OAE explained that it intended to seek additional records from respondent that were not the subject of its current petition. On the same date, the Deputy Clerk acknowledged that the OAE's motion had been withdrawn.

Thereafter, in a letter dated November 6, 2017, the OAE acknowledged receipt of additional documents from respondent but detailed the documents and explanations that respondent had failed to submit to the OAE, despite its repeated requests that he do so, including, but not limited to, monthly three-way

reconciliations for the period December 2015 to January 2016, the expanded audit period. The OAE expanded the audit period after learning that respondent recently had opened the TD Bank ATA.

On November 22, 2017, after respondent failed to submit the outstanding documents, the OAE again directed respondent to submit the outstanding records no later than November 30, 2017. Respondent failed to reply to the OAE's letter. Accordingly, on January 12, 2018, the OAE filed with the Court a second petition seeking his immediate temporary suspension. Respondent again opposed the petition.

In his letter dated February 15, 2018, in reply to the OAE's November 6, 2017 letter, respondent produced additional records, but stated that he was unable to produce monthly three-way reconciliations, ATA receipts or disbursements journals, or client ledger cards for the months of December 2015 and January 2016. He explained:

> I am unable to find this information in my files and am unable to do the three-way reconciliations. I enclosed the journal and the bank statements.
>
> [ExOAE71.]

According to the OAE, his production remained deficient. Accordingly, on March 5, 2018, the OAE again notified respondent that his production remained deficient and enumerated the outstanding documents. In a separate

letter dated March 13, 2018, the OAE also requested his New Jersey tax form in which he had requested a six-month extension to file his 2016 tax returns. Respondent, however, failed to produce his tax form, despite the OAE's directive that he do so.

On April 24, 2018, the Court issued an Order, directing respondent to produce to the OAE all outstanding documents and information no later than forty-five days after the filing date. In the event respondent failed to do so, the Order provided, that "upon report to the Court by the Office of Attorney Ethics by detailed certification, respondent may be temporarily suspended from practice without further notice."

On June 7, 2018, respondent submitted additional records to the OAE, claimed that his production was now complete, and requested that the OAE withdraw its pending petition for his temporary suspension. Respondent's production, however, remained incomplete and, thus, on June 19, 2018, the OAE submitted a supplemental affidavit to the Court, detailing the outstanding records, and requesting that the Court grant its pending petition.

On October 18, 2018, the Court filed an Order, granting the OAE's petition and temporarily suspending respondent, effective November 16, 2018. The Order stated, however, that, if respondent cured the deficiencies and upon report by the OAE prior to the effective date of the Order, the Order would be

automatically vacated. Respondent failed to comply with the Court's Order and, thus, effective November 16, 2018, he was temporarily suspended.

On November 26, 2018, the OAE informed the Court that, due to respondent's failure to submit the requested records, his trust and business accounts should be restrained from disbursements and requested that the Court's suspension Order be amended to include "that all funds, if any, currently existing or hereinafter deposited in any New Jersey financial institution maintained by Respondent . . . be restrained from disbursement except on application to the Court." Accordingly, on January 14, 2019, the Court entered an amended Order, reiterating the November 16, 2018 effective date of his temporary suspension, and also restraining the bank accounts related to his practice of law.

On December 12, 2018, respondent appeared before the OAE for a second demand audit. Respondent produced some, but not all, of the outstanding documents. On December 14, 2018, the OAE identified the outstanding documents and information. The OAE directed respondent to produce the documents no later than December 28, 2018.

On December 18 and December 26, 2018, respondent provided additional written explanations and records in response to the OAE's inquires. Among those records were respondent's correspondence with accompanying property tax refund checks to the Kazis; Grant; Kwantoro; and Liguori, which he drafted

and disbursed from his TD Bank ATA, despite having been temporarily suspended from the practice of law. Accordingly, on January 16, 2019, the OAE directed respondent to submit a written explanation for his actions.

On January 30, 2019, respondent filed a motion to vacate the temporary suspension order. The OAE informed the Court that it did not oppose the motion, and, on February 27, 2019, the Court filed an Order reinstating respondent to the practice of law.

Based upon the foregoing, the OAE asserted that respondent violated RPC 8.1(b) and R. 1:20-3(g)(3) by failing to fully cooperate with the OAE's audit and investigation.

Respondent denied having failed to cooperate with the OAE's investigation, arguing, instead, that the OAE's document demands were not "lawful" because the OAE failed to prove when the various letters were mailed to and received by respondent, rather than when the letters were dated.

Recordkeeping Deficiencies

The OAE's audit and subsequent investigation of respondent's financial books and records revealed the following recordkeeping deficiencies:

- Failure to maintain fully descriptive client ledger cards;
- Failure to maintain separate client ledger cards (R. 1:21-6(c)(1)(B));

- ATA transactions unrelated to the practice of law (R. 1:21-6 a)(l));
- Commingling legal fees (approximately $79,000.00) in his TD Bank ATA;
- Of the approximately $79,000.00 of commingled legal fees, only $17,883.63 was deposited in respondent's ABA (R. 1:21-6(a)(2));
- Improper TD Bank ATA and ABA designations (R. 1:21-6(a)(2));
- Failure to conduct ATA three-way reconciliations (R. 1:21-6(c)(1)(H));
- ATA deposit slips lack sufficient detail to identify each item of deposit (R. 1:21-6(c)(l)(A));
- Failure to maintain fully descriptive ATA and ABA receipts and disbursements journals (R. 1:21-6(c)(1)(A));
- ABA frequently overdrawn (R. 1:21-6(d));
- Failure to maintain canceled TD Bank ABA checks (R. 1:21-6(b)); and
- Failure to include client identification on all ATA checks (R. 1:21-6(c)(1)(G)).

In addition, the OAE identified thirteen cash withdrawals from respondent's ATA, totaling $11,575.00, in violation of R. 1:21-6(c)(l)(A).

As of December 12, 2018, when the OAE conducted its second demand audit, respondent had corrected his recordkeeping deficiencies.

Based on the foregoing, the OAE asserted that respondent violated RPC 1.15(d).

Respondent denied having violated the recordkeeping Rules, with the limited exception of failing to maintain fully descriptive client ledger cards for some clients.

The Ethics Proceeding

Prior to commencing the formal ethics hearing, the Special Ethics Adjudicator held case management conferences and resolved numerous motions, each of which are discussed below.

The OAE's Amended Complaint

In its February 21, 2020 pre-hearing memorandum, the OAE asserted that it inadvertently had omitted from its complaint a charge alleging a violation of RPC 8.4(b), which, according to the OAE, it routinely, as a matter of policy, charges in "every complaint that alleges knowing misappropriation." The OAE stated that the amended complaint added this additional charge and related language on page 2, where it listed the various charges, and the addition of two new paragraphs, numbered 100 and 101, under Count One of the Amended Complaint. On that same date, the OAE served respondent with a copy of the amended complaint.

On February 25, 2020, respondent opposed the OAE's attempt to file an amended complaint on the eve of the ethics hearing, denying that he had engaged in criminal conduct. Further, respondent asserted that the amendment denied him the due process afforded to someone charged with criminal conduct. "By not adhering to the Rules governing the Courts of this State and the Professional Rules of Conduct governing Prosecutors in this State, [the OAE] ha[s] created a situation where Respondent's Constitutional Right to be considered innocent until proven guilty has been stolen." See Respondent's February 25, 2020 Letter to Special Ethics Adjudicator, p.2.

By letter opinion dated March 2, 2020, the Special Ethics Adjudicator accepted the OAE's February 20, 2020 amended complaint as the operative pleading. The Special Ethics Adjudicator reiterated that the amended complaint added the inadvertently omitted RPC 8.4(b) charge, arising out of the same facts of the original complaint.

The OAE's Motion to Amend Count One of the Complaint

On August 7, 2020, the OAE moved to dismiss from its amended complaint Count One, Paragraph 75, which alleged that respondent had knowingly misappropriated funds from his client, Thomas Liguori. The OAE asserted that the motion to dismiss was based upon the death of Liguori and its

resulting inability to prove, by clear and convincing evidence, that respondent knew that he was not authorized to retain the property tax appeal refund owed to Liguori. The OAE asserted that it would be able to prove, however, that respondent violated RPC 1.15(a) and (b) by failing to keep Liguori's funds intact and to promptly disburse those funds to his client.

Respondent did not oppose the motion and, thus, on November 23, 2020, the Special Ethics Adjudicator granted the OAE's motion.

Respondent's Motion to Bar Evidence and Dismiss the Complaint

On July 7, 2020, respondent filed a formal motion to bar the OAE from presenting certain evidence at the disciplinary hearing and to dismiss all allegations against him. Further, respondent asserted violations of his Sixth Amendment rights pursuant to the Constitution of the United States, arguing that the "OAE's failure to provide the [r]espondent with evidence to fully support all of its allegations, is a violation of his rights as he is being prevented from confronting the evidence against him." See Respondent's July 7, 2020 letter brief, p.4.

On August 10, 2020, the OAE opposed respondent's motion to bar and/or dismiss the complaint, arguing that the factual disputes raised by respondent

were best left to the trier of fact and should not be decided on a motion to dismiss.

Respondent filed a reply brief dated August 21, 2020, again arguing that dismissal of the ethics charges was warranted in view of the lack of evidence to support the allegations of the complaint. He alleged that the complaint contained inaccurate facts, failed to cite governing law, and contained manufactured facts.

On November 23, 2020, the Special Ethics Adjudicator denied the motion. She characterized respondent's motion as a challenge to the adequacy of the evidence that the OAE would present against him at the hearing, rather than the OAE's failure to timely furnish discovery, as respondent had alleged. Applying the standard governing motions to dismiss and citing Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 772 (1989), the Special Ethics Adjudicator acknowledged that the non-movant was entitled to every reasonable inference of fact. Specifically:

> Respondent's objections go to the OAE's ability to prove the allegations in the Amended Complaint. In reviewing a motion to dismiss, we are limited to examining the Amended Complaint's allegations to determine if a viable cause of action is suggested by the factual assertions. Questions of fact, and the credibility of witnesses, are to be weighed at the hearing.
>
> …
>
> After reviewing each count of the Amended Complaint, and accepting all of the allegations pled as true, as I must, I conclude the Amended Complaint sufficiently

> details facts that support violations of the charged Rules of Professional Conduct.
>
> [November 23, 2020 Letter Opinion of the Special Ethics Adjudicator, pp. 2-3.]

Thus, the Special Ethics Adjudicator denied the motion stating, however, that she would revisit, during the ethics hearing, any discovery disclosure issues, if such issues arose. Further, she reserved respondent's constitutional challenges for the Court, as R. 1:20-15(h) requires.

Respondent's Motion for Summary Judgment and Other Relief

On March 22, 2021, respondent filed a motion seeking various relief, including summary judgment on Counts One and Two of the amended complaint; barring Justin Mendyk, the OAE's random compliance auditor, from testifying based upon respondent's allegations of perjury or, alternatively declaring him an expert; ordering Steven J. Zweig, the former OAE attorney assigned to the matter, to testify; ordering the OAE to disclose the name of the attorney that drafted the ethics complaint and ordering that individual to appear at the ethics hearing to testify; barring the OAE from presenting evidence on which it has not provided discovery; and barring further amendments to the complaint.

In its April 19, 2021 opposition brief, the OAE observed that the Court Rules do not contemplate a motion for summary judgment in the attorney

disciplinary system and, instead, only recognize a motion to dismiss on three discrete and distinct bases, none of which were applicable. Thus, the OAE argued that the Rules mandate that the ethics hearing proceed on all issues.

Further, notwithstanding the procedural deficiency of respondent's motion, the OAE also urged that respondent's motion failed because there were genuine issues of material fact that must be adjudicated by a trier of fact. Respondent's supporting certification contained myriad factual assertions purporting to dispute the allegations contained in the OAE's amended complaint.

The OAE also opposed respondent's additional requests for relief, including barring its fact witness (Mendyk); compelling the former OAE attorney (Zweig) to testify; and divulging the name of the individual who drafted the OAE's complaint.

On June 3, 2021, the Special Ethics Adjudicator, by letter opinion, denied respondent's motion for summary judgment on the basis that, "after reviewing the competent materials presented, and viewing the evidence in the light most favorable to the non-moving party (i.e., the OAE), as I must, I conclude that there are numerous material and genuine factual disputes that can only be resolved by the finder of fact at the hearing." The Special Ethics Adjudicator also observed that respondent's constitutional claims that the "baseless

litigation" violated his due process and constitutional rights were premature and reserved for the Court.

Next, the Special Ethics Adjudicator rejected respondent's assertion that Mendyk should be barred from testifying based upon his purported false testimony and evidence of bias against respondent. She charactered respondent's objection in this respect as challenges to Mendyk's credibility which could be tested through cross-examination.

The Special Ethics Adjudicator denied respondent's attempt to call Zweig as a witness. She reasoned that Zweig's testimony was unnecessary and would needlessly call for information protected by the attorney-client and work product privileges. She also denied respondent's request to qualify Mendyk as an expert witness as premature but stated that she would allow respondent to seek such a determination during the hearing, if appropriate.

Finally, the Special Ethics Adjudicator declined to compel the OAE to disclose the name of the individual who drafted the complaint reasoning, in part, that respondent failed to demonstrate that the drafter of the complaint had additional information to offer with respect to his alleged "false statements of material fact set forth in the complaint" that he cannot elicit from other witnesses. Further, to the extent respondent's argument in this respect relates to

a constitutional challenge, the Special Ethics Adjudicator reiterated that such arguments are preserved for the Court.

The Ethics Hearing

The ethics proceeding in this matter spanned five days, commencing on August 23, 2021 and continuing August 24, 25, 31, and September 21, 2021. The OAE's case rested on the testimony of its senior random compliance auditor, Justin Mendyk, along with numerous exhibits admitted into evidence.

Respondent's case rested on his own testimony, his cross-examination of Mendyk, and exhibits he moved into evidence.

The Parties' Post-Hearing Submissions

Respondent's Post-Hearing Motion for Judgment and Other Relief

On September 28, 2021, at the conclusion of the hearing, respondent filed another motion with the Special Ethics Adjudicator seeking the following relief: dismissal of Count One in its entirety; dismissal of Count One as it pertains to the Kazi client matter, based on the lack of evidence that the OAE ever communicated with Khusba Kazi, the person identified in the OAE's complaint; dismissal of Count One, paragraphs 100 and 101, relating to the OAE's allegation that respondent violated RPC 8.4(b) by virtue of his knowing

misappropriation of client and escrow funds; dismissal of Count Two; dismissal of Count Three; and determining that the OAE should be barred from introducing a fully-signed copy of the Rento Counteroffer based upon its failure to produce same during discovery.

On November 8, 2021, the OAE opposed respondent's motion, which it described as akin to a motion for involuntary dismissal, pursuant to R. 4:37-2(b). The OAE urged the Special Ethics Adjudicator to deny the motion because it had produced evidence during its case in chief, via witness testimony and documents, that respondent violated the charged RPCs.

The Special Ethics Adjudicator addressed respondent's motion in her September 6, 2023 report and recommendation, discussed below.

Subsequently, on August 31, 2023, prior to the issuance of the Special Ethics Adjudicator's report, respondent filed another motion for summary judgment and other relief. In particular, respondent sought the dismissal of the complaint, a determination that Mendyk had committed perjury in this case; and that OAE Deputy Ethics Counsel, HoeChin Kim, had committed misconduct by suborning perjury and pursuing baseless allegations unsupported by the record.

On September 5, 2023, the OAE opposed the motion based upon respondent's failure to seek leave to file additional motion practice following the close of the hearing record.

On September 25, 2023, the Special Ethics Adjudicator issued a letter opinion denying respondent's motion. First, the Special Ethics Adjudicator stated that respondent's motion raised the same arguments she previously had ruled upon. Further, she rejected respondent's belated attempt to supplement the record with documents that could have been, but were not, presented at the hearing. Moreover, with regard to Mendyk, the Special Ethics Adjudicator observed as follows:

> . . . Respondent continues to argue that the OAE's investigator, Mr. Mendyk, committed perjury and manufactured evidence, and that the OAE either did so too or it was responsible for its role in the misconduct . . . . As my Report and Recommendation make clear, I relied on the evidence adduced at the hearing. Mr. Mendyk testified extensively at the hearing (on four days), and I explicitly found Mr. Mendyk, the OAE's investigator, to be a credible witness. I expressly rejected Respondent's contention that Mr. Mendyk manufactured evidence and/or committed perjury.
>
> [See Special Ethics Adjudicator's September 25, 2023 Letter Opinion, p.2.]

The OAE's Summation

The OAE, in its November 15, 2021 written summation to the Special Ethics Adjudicator, urged that respondent had knowingly misappropriated client and escrow funds, in five client matters, in violation of RPC 1.15(a), Wilson, Hollendonner, and Skevin, misconduct which warrants his disbarment.

Specifically, in the Rento matter, the OAE asserted that respondent represented David L. Rento in the purchase of foreclosed property. In furtherance of that representation, respondent drafted a rider that called for the deposit to be held in respondent's ATA. Further, in his October 6, 2016 letter to Crivello, the seller's representative, respondent confirmed that Rento had wire transferred $10,000 to his ATA. Moreover, respondent resisted the October 28, 2016 closing date, instead offering November 30, 2016 as a date Rento could meet.

Immediately upon receipt of Rento's $10,000 buyer's deposit, he improperly credited to himself $2,500 on his client ledger, as a legal fee owed by David G. Rento, the son, and his business partner, for work unrelated to the real estate transaction.

On October 28, 2016, the initial closing date, respondent's ATA balance was $9,343.25, creating a shortage of $656.75 that he was required to hold in escrow. On November 30, 2016, the closing date respondent had suggested, his balance had dropped to $4,618.25, creating a shortage of $5,381.75. The OAE argued "[t]hus, if his client had been ready to close on November 30, 2016, respondent would not have had sufficient funds in his trust account to disburse the $10,000 escrow out of his trust account."

Although the OAE was unable to obtain the cooperation of David L. Rento or Roberta L. Rento, it had verified with the seller's representative that the seller had not authorized respondent to use or disburse any of the escrow funds that respondent held in anticipation of the real estate transaction. Pursuant to Hollendonner, the OAE asserted that respondent, as an attorney holding escrow funds, was not authorized to use or disburse those funds without the consent of both parties – David L. Rento and Wells Fargo.

According to the OAE, respondent's mistaken belief that David's son had authorized him to use $2,500 as a legal fee was not reasonable in view of the fact that he affirmatively told the seller's agent he would hold the $10,000 in his trust account. Further, just prior to the proffered November 30, 2016 closing date, respondent issued three checks from this ATA for personal use, including a $1,000 deposit for a car and a $4,000 check to himself to "move." Consequently, those personal expenditures caused the $10,000 escrow balance drop to $4,618.25. Accordingly, the OAE maintained that respondent's purported explanation of having authority to use $2,500 of the escrow funds did not explain his additional invasions of the escrow balance.

Moreover, the OAE asserted that respondent's recordkeeping system, which included "keeping track of his legal/personal funds in his trust account via his own ledger, i.e., crediting amounts to himself without effecting actual

disbursements contemporaneously," was not accurate and resulted in several instances of shortages in his account. Accordingly, the OAE argued that "[r]espondent had to have known that he was dipping into client funds when he took more money than was purportedly due to him, such that he was willfully blind to his actions." Thus, citing In re Skevin, 104 N.J. 476, 485 (1986), cert. denied, 481 U.S. 1028 (1987), the OAE asserted that the concept of willful blindness, which the Court equates to knowledge, was applicable and mandated his disbarment.

Moreover, by knowingly misappropriating entrusted funds, the OAE asserted that respondent violated RPC 8.4(b) by committing the criminal act of disposing of entrusted property, contrary to N.J.S.A. 2C:21-15, and RPC 8.4(c).

Next, in the Williams matter, the OAE asserted that the undisputed facts established that, on November 19, 2015, respondent deposited a buyers' $10,000 real estate deposit in his Peapack-Gladstone ATA. On December 1, 2015, respondent's Peapack-Gladstone ATA balance was $10,000.16. Almost immediately thereafter, respondent opened a new ATA with TD Bank and deposited $9,000 via check issued from his Peapack-Gladstone ATA, thereby reducing that account balance to $1,000.16. Respondent then used the remaining $1,000.16 to pay rent ($625), a credit card ($150), and himself ($225.16).

The OAE urged the Special Ethics Adjudicator to reject respondent's claim that he mistakenly had deposited $9,000, rather than $10,000, as incredible. Although respondent testified that he had relied on his mother-in-law, who was also his bookkeeper, he had personally deposited the buyers' $10,000 deposit, just a few weeks prior. Given the short period of time (approximately two weeks) from his receipt of the $10,000 escrow to his opening the new TD Bank ATA, respondent should have known that the new ATA, with a $9,000 balance, was short the full escrow.

Further, if the $9,000 deposit was a mistake that he had corrected in January 2016, when he replenished the TD Bank ATA in advance of the closing, respondent was on notice that his recordkeeping was not accurate. Yet, he failed to take any steps to modify his recordkeeping and continued to engage in a system of commingling and crediting himself fees left in his then operating trust account.

Neither the sellers nor the buyers had authorized respondent to use or disburse the $10,000 escrow and, thus, the OAE argued that respondent engaged in knowing misappropriation of entrusted funds, in violation of RPC 1.15(a), and the principles of Wilson and Hollendonner. Alternatively, respondent's misconduct evidenced a willful blindness and, pursuant to Skevin, mandated his disbarment. Moreover, by this same misconduct, the OAE asserted that

respondent violated RPC 8.4(b) by committing the criminal act of disposing of entrusted property, contrary to N.J.S.A. 2C:21-15, and RPC 8.4(c).

In the Kazi matter, the OAE asserted that respondent had knowingly misappropriated client funds by failing to disburse funds to which the clients were entitled following respondent's successful property tax appeals related to two properties. In 2011, the Town of Boonton issued a check for the Kazis in the amount of $2,108.21. Pursuant to the parties' fee agreement, the Kazis were entitled to $1,002.47. Respondent, however, issued a check in the amount of $208.92, which the clients never received.

Next, in 2016, the Township of Montville issued a check for the Kazis in the amount of $4,436.51, which respondent deposited in his TD Bank ATA. The Kazis were entitled to $2,442.65. Respondent failed to disburse the Kazis' funds until December 2018, after the OAE had commenced its investigation.

The OAE rejected respondent's claims that he had performed additional work on the Kazis' behalf, given the lack of corroborating evidence in respondent's client file, or the documents produced to the OAE by the Kazis (OAESp8). The OAE also rejected respondent's arguments related to confusion over Mr. Kazi's name. Instead, the OAE asserted that it had named Mahazabeen Kazi as the client and the admitted evidence refer to her, such that there was

clear and convincing evidence that respondent had mishandled her funds. (OAESp9).

Further, by depositing client funds relating to the Boonton appeal in his ABA and, subsequently, disbursing a check from that account to the client, respondent improperly commingled funds, in violation of RPC 1.15(a).

Alternatively, the OAE argued that respondent's misconduct evidenced willful blindness and that, pursuant to Skevin, he should be disbarred. By this same misconduct, the OAE asserted that respondent violated RPC 8.4(b) by committing the criminal act of disposing of entrusted property, contrary to N.J.S.A. 2C:21-15, and RPC 8.4(c). The OAE conceded, however, that there was no clear and convincing evidence that respondent had made a false statement to the OAE, in view of the Kazis' failure to testify at the ethics hearing.

In the Liguori matter, the OAE asserted that, in August 2016, respondent successfully appealed Liguori's real estate taxes and, pursuant to his fee agreement, Liguori was owed $781.57. Respondent failed to disburse the funds to Liguori until December 2018, after the OAE had commenced its investigation. Between September 2016 and December 2018, respondent's TD Bank ATA balance dropped below the amount he owed to Liguori.

The OAE asserted that respondent had negligently misappropriated client funds, in violation of RPC 1.15(a), and failed to promptly disburse those funds, in violation of RPC 1.15(b).

Regarding the Grant and Kwantoro client matters, the OAE urged the Special Ethics Adjudicator to reject respondent's claim that a mere error had resulted in the underpayment to both clients. In particular, the OAE emphasized that, by May 2016, when he represented Grant and Kwantoro, respondent was already on notice (by virtue of his mishandling of the Williams matter) that his recordkeeping practices were improper and, specifically, his practice of crediting himself legal fees but leaving those fees in his ATA without the contemporaneous disbursement to his business account. Yet, he failed to correct his defective system, resulting in the obvious errors he made in both the Grant and Kwantoro appeals.

The OAE explained that, had the tax appeals occurred in isolation, it may not have charged knowing misappropriation. However, "in view of his other defalcations, involving the Rento escrow, the Williams escrow, and the Kazi trust funds, the OAE submits the instant misappropriations were, at a minimum, the result of respondent's willful blindness, making them knowing misappropriations."

Thus, the OAE argued that respondent committed knowing misappropriation of client funds in the Grant and Kwantoro matters, in violation of RPC 1.15(a) and the principles of Wilson. Alternatively, respondent's misconduct evidenced a willful blindness and, pursuant to Skevin, mandated his disbarment. By this same misconduct, the OAE asserted that respondent violated RPC 8.4(b) by committing the criminal act of disposing of entrusted property, contrary to N.J.S.A. 2C:21-15, and RPC 8.4(c).

Regarding Count Two of the complaint, the OAE urged the Special Ethics Adjudicator to find that respondent had failed to cooperate with the OAE's investigation, in violation of RPC 8.1(b) and R. 1:20-3(g)(3), evidenced by the documents admitted into evidence, Mendyk's testimony, and the fact the Court had temporarily suspended him based upon his failure to cooperate.

Last, with regard to Count Three, the OAE asserted that the evidence and Mendyk's testimony clearly and convincingly established that respondent committed the recordkeeping violations alleged in its amended complaint.

For his knowing misappropriation of client and escrow funds across five client matters, the OAE urged that respondent be disbarred.

Respondent's Summation

In his November 15, 2020 summation brief, respondent argued that the OAE had failed to meet its burden of establishing his knowing misappropriation of client or escrow funds by clear and convincing evidence. Indeed, he maintained that he committed no misconduct and that the OAE had summarily concluded, without evidence, that he had knowingly misappropriated client funds without any factual basis for the allegations.

In respect of the Rento matter, respondent offered multiple defenses.

First, he denied that an enforceable contract existed between his client, who he described as "Rento, Jr." (the son), and Wells Fargo. Citing New Jersey's statute of frauds, N.J.S.A. 25:11-1, respondent asserted that the real estate contract between David L. Rento (the father) and Wells Fargo did not become enforceable until, at the earliest, December 14, 2016, when Wells Fargo signed the Counteroffer. He maintained, however, that, by its own terms, the Contract did not become effective until the close of the attorney review period, and thus, became effective on December 20, 2106. By then, respondent had been replaced by successor counsel.

> Respondent also claimed that the unsigned counteroffer, that the OAE attached to its amended complaint and admitted into evidence, was an offer by "Rento Jr. to purchase the property" and, thus, unenforceable. (RSp8). Throughout trial, without any factual basis to support its position, the OAE has

> taken the position that the Counter Offer was an offer from Wells Fargo to Rento Jr. and that Rento Jr.'s signature and initials on that document created a contract. It has not produced any evidence to support this allegation, other than Mendyk's baseless, inaccurate testimony.
>
> ***
>
> When Rento Jr. was unable to obtain a mortgage, he assigned the document to his father, Rento Sr. It is with Rento Sr that the contract was signed, not [respondent's] client, Rento Jr.
>
> [RSp8.]

Respondent argued that the OAE's allegations rested on its flawed conclusion that a valid contract existed between Rento (the son) and Wells Fargo which, according to respondent, is incorrect. "Without a valid contract, neither the seller nor its representatives have any right to control how the buyer uses their funds."

Next, respondent claimed that the Counteroffer required the buyer to deposit earnest money in the listing agent's escrow or with the seller's closing agent "upon acceptance of this [Counteroffer]." Thus, when respondent wrote to Crivello (Wells Fargo's listing agent), on October 6, 2016, it was to propose amendments to the Counteroffer, including that respondent would hold the buyer's deposit in his trust account. According to respondent, this statement was:

> a prospective statement IF, and only IF, Wells Fargo accepted [respondent's] proposed amendments to the

> Contract. Wells Fargo never accepted these changes and never considered Rento Jr's offer as it failed to meet several of Wells Fargo's statement requirements.
>
> [RSp12.]

Next, respondent asserted that he had Rento, Jr.'s permission to use the funds to satisfy a legal bill, and that the OAE had presented no contrary evidence.

Respondent also denied misappropriating funds in the Williams matter. He explained why he had opened a new account with TD Bank (its proximity to his new law office) and testified that he had asked his bookkeeper "to write a check for the entire amount held in his [Peapack-Gladstone] ATA for Williams so he could open his new TD Bank ATA." His bookkeeper erroneously wrote him a check in the amount of $9,000. In the absence of additional evidence demonstrating that he knowingly failed to transfer the full amount, respondent asserted that the allegations must be dismissed.

Regarding the Kazi matter, respondent argued that the claims should be dismissed based upon Mendyk's purported false testimony and lack of other competent evidence. Specifically, respondent claimed that the OAE's allegations, in its complaint, that reference "Khusba Kazi" as the source of any information were false because the OAE had never spoken to Khusba. Mendyk, according to respondent, perpetuated the falsity in his testimony when he

testified that "Khusba" was Mahazabeen's husband, with whom the OAE had spoken. Only later, when respondent confronted Mendyk with his own affidavit, did Mendyk admitted that Khusba was, in fact, Mahazabeen's daughter with whom he had not spoken.

Next, respondent asserted that the OAE carefully edited his statements, during the December 12, 2018 demand audit, "in perpetuating this hoax." Specifically, respondent claims that Mendyk, in his report, had attributed a false statement to respondent regarding what Mr. Kazi had told him regarding a potential bankruptcy. As a result of this false statement, which underpinned the OAE's RPC 8.1(a) charge, respondent was forced to defend himself against an allegation that was premised on factually inaccurate evidence. Respondent informed the OAE that Mr. Kazi had told him to hold the tax refund because he was considering bankruptcy, not going through bankruptcy, an important distinction according to respondent. Further, respondent criticized Mendyk's reliance upon Mrs. Kazi's previous statement to the OAE that she had consulted with respondent regarding a foreclosure notice, eventually hired a different lawyer, and that their home never went into foreclosure. (RSp21). On cross-examination, Mendyk confirmed that he did not verify Mrs. Kazi's statement in this respect.

Next, Mendyk admitted that he lacked any evidence that respondent was involved in the cashing of the $208.92 check (related to the Boonton property tax appeal) that he issued to the Kazis.

Regarding the Liguori client matter, respondent maintained that Liguori had hired him to assist with a reckless driving ticket and agreed respondent could keep the remainder of the property tax refund as payment for this additional work. The OAE failed to submit any evidence to refute respondent's testimony in this respect, and thus urged the Special Ethics Adjudicator to dismiss all charges related to his handling of the Liguori matter.

Respondent also denied misappropriating funds in the Grant or Kwantoro matters, emphasizing his testimony that the error was merely typographical, and that the OAE presented no evidence to the contrary.

Respondent urged the Special Ethics Adjudicator to dismiss the allegation that respondent failed to cooperate with the OAE's investigation based upon his failure to timely submit the requested documents. Respondent premised his argument on the OAE's failure to establish that its demands were "lawful," which it failed to do. In this respect, respondent claimed that, pursuant to R. 1:20-3(g)(3), he was required to submit his responses within ten days from his receipt of the requests. However, according to respondent, the OAE had failed to introduce any evidence regarding the dates on which respondent actually

received the OAE's document requests, or even the dates that the letters actually were mailed, and, thus, the Special Ethics Adjudicator was unable to calculate the date by which his responses actually were due.

Lastly, respondent denied that the OAE had established, by clear and convincing evidence, that his recordkeeping practices failed to comport with the requirements of R. 1:21-6, which he had corrected as evidenced by the Court's Order lifting his temporary suspension and reinstating him to the practice of law.

Based on the foregoing, respondent urged dismissal of all allegations against him.

Moreover, respondent urged the Special Ethics Adjudicator to reprimand the OAE based upon its failure to produce exculpatory evidence until the conclusion of the hearing, referring to the OAE's exhibits 190 and 191 (the signed Counteroffer). Consequently, according to respondent, the entirety of the OAE's case was premised upon a theory that a valid real estate contract existed on September 27, 2016, when, in fact, the contract did not become enforceable until December 14, 2016, at the earliest.

Next, respondent sought to bar Mendyk's testimony based on the unreliability of his testimony, alleging that he "has shown he is willing to testify falsely and to file affidavits containing false, baseless allegations against" him. Respondent claimed Mendyk's affidavit to the Court in support of the OAE's

petition for his temporary suspension contained false accusations, including his commingling of $64,000 in personal funds. Further, respondent stated that Mendyk's confusion regarding Khusba Kazi, and whether Khusba was the husband or daughter to Mahazabeen, underscored his lack of credibility. (RSpp48-50). Respondent continued to highlight other aspects of Mendyk's testimony that, in his view, demonstrated his lack of credibility.

The Special Ethics Adjudicator's Findings

On September 6, 2023, the Special Ethics Adjudicator issued her report and recommendation, concluding that the OAE had proven some, but not all, of the charged violations by clear and convincing evidence. She determined however, after reviewing the evidence and testimony presented at the ethics hearing, that respondent had knowingly misappropriated funds in connection with the Rento client matter and, thus, recommended that respondent be disbarred.

As a preliminary matter, the Special Ethics Adjudicator recounted the procedural history of the case, including her rulings on the various motions filed by both parties. She had not yet ruled on respondent's September 28, 2021 motion to dismiss the case, pursuant to R. 1:20-5(d)(2), but determined to "now deny that motion."

Next, the Special Ethics Adjudicator separately addressed each count of the OAE's amended complaint, as follows.

The Rento Client Matter (Count One)

The Special Ethics Adjudicator concluded that the OAE had established, by clear and convincing evidence, that David L. Rento (the father) was the purchaser of the foreclosed property. She noted that the 12-page Counteroffer identified the buyer as "David Rento" in various locations and, on page 9 of the document, the buyer's full name is identified as "David L. Rento." Further, on September 27, 2016, David L. Rento signed the Counteroffer as the buyer in the transaction.

In early October, respondent had received a copy of the Counteroffer and held $10,000 in his TD Bank ATA on behalf of the buyer. In fact, TD Bank's records clearly indicated that Roberta L. Rento, David L.'s wife, initiated the wire transfer to respondent's trust account, which was deposited on October 3, 2016. Further, the bank's records stated that the funds are "FBO David L. Rento. Further, both the OAE auditor and respondent testified that David L. Rento had, ultimately, purchased the property.

The Special Ethics Adjudicator rejected respondent's claim that he never represented David L. Rento. Citing In re Palmieri,76 N.J. 51, 59 (1978), the

Special Ethics Adjudicator emphasized that an attorney-client relationship can be deemed to exist based upon conduct of the attorney and client, or by surrounding circumstances, even where there has been no articulation of such professional engagement.

Further, the Special Ethics Adjudicator concluded that, regardless of whether respondent viewed David L. Rento as a client, by early October 2016, he owed a fiduciary duty to Rento as an escrow agent. Specifically, citing case law, the Special Ethics Adjudicator acknowledged that our courts have held that a member of the bar owes a fiduciary duty to individuals, though not strictly clients, who the attorney knows or should know rely on them in their professional capacity. See Albright v. Burns, 206 N.J. Super. 625, 632-33 (App. Div. 1986); In re Hurd, 69 N.J. 316, 330 (1976); In re Genser, 15 N.J. 600, 606 (1954); Stewart v. Sbarro, 142 N.J. Super. 581, 593 (App. Div. 1976), certif. denied, 72 N.J. 459 (1976).

The Special Ethics Adjudicator concluded that respondent provided the following legal services on David L. Rento's behalf: he was provided a copy of the Counteroffer, signed by David L. Rento, on September 27, 2016; following his review, respondent drafted legal documents for David L. Rento, including a letter to Wells Fargo's representative, in which he sought to negotiate concessions related to the real estate purchase, and to set a new closing date to

take place at his law office. Further, respondent drafted the rider to the Contract, which sought to amend the initial real estate contract and Counteroffer for the benefit of David L. Rento. In short, the Special Ethics Adjudicator concluded that respondent provided legal services to and on behalf of David L. Rento.

The Special Ethics Adjudicator rejected respondent's argument that his activities were initiated by David G. Rento (the son), who was a tenant at the property and initially had wanted to purchase the property. "That [r]espondent's services also benefited the son, whom he regarded as a client, do not change my findings and conclusion that David L. Rento (the father) also was [r]espondent's client and one to whom he owed fiduciary duties."

The evidence established that respondent's activities were done in furtherance of his representation of David L. Rento. Consistent with respondent's communications with Wells Fargo, David L. Rento caused or allowed $10,000 to be deposited in respondent's ATA, which respondent accepted. Bank records associated with the wire transfer to respondent's trust account expressly state that they funds were for the benefit of "David L. Rento."

Three days after receiving the deposit, respondent wrote to Wells Fargo's representative, stating his understanding that Wells Fargo "will not change any terms of the Contract or Counter Offer," and detailed various matters that he sought to address on David L. Rento's behalf. In that letter, respondent held

himself out as the buyer's attorney by, for example, stating that the buyer's deposit would be held in his ATA. Indeed, the transaction proceeded based upon respondent's representation to Wells Fargo.

Further, the Special Ethics Adjudicator noted that, in his February 10, 2017 letter to the OAE, respondent had admitted that David L. Rento was his client, characterizing the $10,000 deposit as "client funds" for his "client's real estate closing."

The Special Ethics Adjudicator rejected respondent's testimony that the $10,000 deposit was the son's money, concluding that his "testimony is inconsistent with the bank's records regarding the source of the wire transfer."

Further, the Special Ethics Adjudicator concluded that respondent also owed a fiduciary duty to Wells Fargo, as the seller in the transaction, including his promise to hold, inviolate, the buyer's $10,000 earnest money deposit. Specifically, respondent's conduct, including negotiating and coordinating with Wells Fargo, and notifying Wells Fargo of his receipt of the buyer's earnest money deposit into his trust account, were "'acts evidencing [respondent's] acceptance of professional engagement on behalf of [Wells Fargo's] interests.'" See Albright v. Burns, 206 N.J. Super. 625, 632 (App. Div. 1986).

Next, the Special Ethics Adjudicator determined that respondent's statement in his October 6, 2016 letter to Wells Fargo's representative that he held $10,000 in his ATA were false when he made it.

Based on the foregoing, the Special Ethics Adjudicator found that respondent had knowingly misappropriated his client's (David L. Rento) deposit that he was obligated to hold intact for both his client's and Wells Fargo's benefit, in violation of RPC 1.15(a) and the principles of Wilson.[7] Further, she concluded that respondent violated RPC 8.4(c).[8]

The Special Ethics Adjudicator observed that respondent's lack of intent to steal, or the fact he reimbursed the funds, negated his knowing misappropriation of client or escrow funds. See In re Konopka, 126 N.J. 225, 233 (1991). Further, she concluded that respondent's actions were not the result of poor recordkeeping, but rather were knowing, as evidenced by his accounting entries on the client ledger which clearly indicated his intent, on the date he received the deposit, to use $2,500 of the $10,000 deposit for his own purposes.

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[7] The Special Ethics Adjudicator did not cite to Hollendonner, despite clearly concluding that the funds should have been held intact for the benefit of both the buyer and seller to the real estate transaction, i.e., the funds constituted escrow funds thereby implicating Hollendonner.

[8] The Special Ethics Adjudicator did not address the charged violation of RPC 8.4(b), which was added by the OAE in its amended complaint and permitted pursuant to the Special Ethics Adjudicator's letter opinion.

In fact, within two months, he would spend the deposit on personal matters, leaving approximately $4,600 of the $10,000 he had been entrusted.

The Special Ethics Adjudicator also highlighted, as further evidence of his wrongdoing, the fact that respondent lacked candor in his statements to the OAE, claiming "no client funds were ever used for any purpose other than the closing."

As a final point related to the Rento matter, the Special Ethics Adjudicator addressed respondent's objection to the admission of OAE's exhibits, OAE-190 and OAE-191, which are the Counteroffer signed by Wells Fargo, and a real estate notice initialed by David L. Rento, respectively. Respondent first claimed that the OAE had failed to provide him with copies during discovery; however, when the OAE claimed it had produced the documents, respondent capitulated that he may have received them, but in an unreadable format.

The Special Ethics Adjudicator determined to admit the two documents, over respondent's objection, because respondent previously failed to advise the Special Ethics Adjudicator or the OAE, despite an opportunity to do so, that certain records had been produced to him in a corrupted format and never sought legible copies. Specifically, she stated:

> If there were issues with discovery, Respondent should have raised them before (not during) the hearing. Also, Respondent cannot say definitively that these particular exhibits were not among those that he received. Respondent is not prejudiced. Respondent had time to review the documents during the hearing,

> and one or both documents may have been in his own original file. Furthermore, Respondent's defenses (that there was no valid contract between David L. Rento and Wells Fargo) rests on OAE-190 and the date that Wells Fargo signed the Counter-Offer according to that document.
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> [SEARpt¶100.]

The Special Ethics Adjudicator rejected respondent's various contractual defenses. Further, she rejected respondent's claim that his October 6, 2016 letter to Wells Fargo did not convey an intent to hold, intact and in his trust account, the buyer's deposit. Specifically, respondent argued that this letter communicated that he only would hold intact the $10,000 deposit if Wells Fargo was acceptable to the suggested contract revisions. Stated differently, respondent claimed his agreement to hold the funds in trust was a prospective, contingent statement which made clear that he would do so if and only if Wells Fargo accepted the proposed amendments. The Special Ethics Adjudicator was unpersuaded by this argument, based upon the opening sentence in respondent's letter, stating "I am in receipt of your email indicating that your client [Wells Fargo] will not change any terms of the Contract or Counter-Offer." The letter does not state that the buyer will not proceed if Wells Fargo continues to disagree with any amendments, nor does the letter state that respondent can use the $10,000 in funds he held in escrow.

In short, the Special Ethics Adjudicator rejected respondent's defenses, stating:

> I reject these defenses because I find that Respondent was not permitted to borrow, including for his personal use, the money given to him as a buyer's deposit whether or not there was a valid and binding contract, and no matter when the contract came into existence. Respondent was given the deposit to hold in his trust account pending the real estate closing for his clients, David L. and David G. Rento (the father and son). He never claimed that David L. Rento (the father) gave him permission to use any part of the deposit, and Respondent was never permitted to use more than $2,500 of the deposit by David G. Rento (the son). Respondent recognized this, when he (albeit) falsely wrote the OAE and advised that "no client funds were ever used for any purpose other than the closing" and the full $10,000 in "client funds" were "wired to my backup attorney."
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> [SEARpt.¶123.]

The Williams Client Matter (Count One)

Regarding the Williams client matter, the Special Ethics Adjudicator declined to find that respondent had knowingly misappropriated the buyer's deposit in the Williams matter by allowing $1,000 to remain in his Peapack-Gladstone ATA, which he then spent on personal items. She accepted respondent's testimony, which was consistent with his earlier statements to the OAE, that when he opened his new ATA with TD Bank, he had deposited $9,000, rather than $10,000 (which he was required to hold on behalf of the buyers in the real estate transaction), because he had relied on his mother-in-law, his sole bookkeeper since 2005, who mistakenly had informed him regarding the amount he should deposit. No party called his bookkeeper to testify and the OAE did not interview her during its investigation, although respondent indicated she had endured a stroke. Further, the Special Ethics Adjudicator noted that respondent had accepted full responsibility for the recordkeeping errors. Ultimately, respondent corrected the $1,000 shortage with his legal fees from other client matters, and the Williams' real estate sale closed without incident.

Citing Hollendonner, the Special Ethics Adjudicator reasoned that knowing misappropriation requires that the funds be invaded "with knowledge that the use of those funds was improper." The OAE, according to the Special Ethics Adjudicator, had failed to establish that respondent's use of the funds was

improper and, in fact, had admitted during the ethics hearing that he did not have "any evidence that [Respondent] knowingly failed to transfer the thousand dollars that's the difference between the 9,000 [Respondent] did transfer and the $10,000 that was on deposit [and] that [respondent] knowingly or intentionally failed to make that transfer."

The Special Ethics Adjudicator determined, however, that respondent had negligently misappropriated client funds, in violation of RPC 1.15(a). Citing to the numerous recordkeeping deficiencies identified by the OAE, she highlighted respondent's practice of "allow[ing] fees he earned to remain in his trust account, and wrote checks for business and personal matters (e.g. rent) on his trust account." According to the Special Ethics Adjudicator, the facts related to the Williams client matter "are more akin to cases in which the evidence established that the attorney's carelessness caused the attorney's invasion of client funds, but not that such invasion was knowing." See In re Konopka, 126 N.J. 225, 238-39 (1991); In re Librizzi, 117 N.J. 481, 492 (1990); In re Gallo, 117 N.J. 365, 372-73 (1989).

The Kazi Client Matter (Count One)

As a preliminary matter, the Special Ethics Adjudicator rejected respondent's argument that the OAE's auditor, Mendyk, lacked credibility and

was uncertain as to names and relationships of Khusba to Mahazabeen Kazi. Specifically, she stated:

> I disagree. Respondent's admitted bookkeeping errors resulted in delay in paying amounts due his clients, Ms. Mahazabeen Kazi and her husband. The OAE also established that Respondent invaded and negligently misappropriated the amounts due while he was to hold them in his TD Bank ATA. As for the OAE investigator, I found Mr. Mendyk to be a credible witness.
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> [SEARpt.¶180.]

The Special Ethics Adjudicator concluded that respondent had negligently misappropriated and, thus, failed to safeguard the Kazis' funds, contrary to RPC 1.15(a), in connection with his handling of both property tax appeals. Specifically, she concluded that respondent's admitted bookkeeping errors had resulted in the delayed payments to his clients, Mahazabeen Kazi and her husband. Therefore, she declined to find that respondent had knowingly misappropriated funds.

The Special Ethics Adjudicator also stated that the OAE did not establish, by clear and convincing evidence, that respondent knowingly made a false statement of material fact, in violation of RPC 8.1(a), in connection with those tax appeals.

The Liguori Client Matter (Count One)

The Special Ethics Adjudicator concluded that respondent had not negligently misappropriated Liguori's funds, in violation of RPC 1.15(a). The Special Ethics Adjudicator described respondent's testimony that he had done work for Liguori for which he had not been paid, and further that he had paid Liguori in an effort to resolve this matter with the OAE, as "credible." Further, she noted that Liguori was deceased and unavailable for testimony, and that the OAE never had spoken to him regarding this matter.

The Special Ethics Adjudicator also declined to find a violation pursuant to RPC 1.15(b), stating:[9]

> I did not find that OAE met its burden as to [RPC] 1.15(b) as respects the allegations relating to Liguori. As I noted, in my Report, the Liguori tax appeal was successful and Hopatcong issued Respondent a $1,717.54, which he deposited into his TD Bank ATA on or about September 2, 2016. (OAE-42). Respondent credibly testified that he had done additional work for Liguori, and Liguori orally approved Respondent's using the tax appeal proceeds to cover Respondent's fees. 8/31/21 Tr. at 123:17-25; 186:15-25. He further testified that a few days after the OAE's December 12 audit, he nonetheless sent Liguori a $781.57 check for the Hopatcong refund "in an effort to resolve this matter" with the OAE. Respondent testified that he had been told by the OAE's attorney that it would behoove him to pay any amounts he still owed

[9] The Special Ethics Adjudicator's finding is memorialized in her supplemental e-mail to the OAE, dated November 30, 2023.

> clients and provide proof of such payments. (8/31/21 Tr. at 124:1-10; OAE-17, Tr. 78:14 to 79:1). Mr. Liguori is unavailable, having passed away (8/31/21 Tr. at 44:8-10; 186:11-14); OAE therefore did not speak to him and his sons offered no substantive information on the services Respondent provided to Liguori. As noted in my Report, under Rule 1.15(b), an attorney is to "promptly deliver to the client…any funds or other property that the client…is entitled to receive." OAE therefore did not establish by clear and convincing evidence that any such funds were due. OAE established and I found, however, that Respondent failed to maintain appropriate records regarding Liguori. As to that matter and others, he failed to keep client-specific ledgers and other records substantiating the work done, fees due, and services provided. Please see my findings in Count I.D and in Count III as to these matters and for more detail.
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> [Special Ethics Adjudicator's November 20, 2023 e-mail to the OAE supplementing her report.]

The Grant and Kwantoro Client Matters (Count One)

The Special Ethics Adjudicator found that respondent negligently, but not knowingly, misappropriated funds in connection with his handling of the Grant and Kwantoro property tax appeals. The Special Ethics Adjudicator relied upon the OAE auditor's testimony that he had no evidence that respondent's underpayment was not simply a typographical error and, further, that he had no direct evidence that respondent knowingly or intentionally made a mistake in the billings for Grant or Kwantoro. Additionally, the Special Ethics Adjudicator

found that the OAE failed to establish, by clear and convincing evidence, that respondent knowingly made a false statement of material fact, in violation of RPC 8.1(a).

Failure to Cooperate with the OAE (Count Two)

The Special Ethics Adjudicator concluded that the OAE had established, by clear and convincing evidence, that respondent failed to cooperate with the OAE's investigation, in violation of RPC 8.1(b) and R. 1:20-3(g)(3), by failing to fully respond to lawful requests for documents. She acknowledged respondent's hospitalization in December 2016 and January 2017 and that he, thus, was unable to communicate with his office during that time. Accordingly, the Special Ethics Adjudicator found that he did not knowingly fail to respond to two of the OAE's discovery requests during that time.

The Special Ethics Adjudicator rejected respondent's assertion that the OAE's discovery requests were not lawful because, "among other things, [r]espondent had an obligation to cooperate." She emphasized that, if respondent believed he had valid objections to the OAE's discovery demands, he failed to timely provide them, in writing, to the OAE.

In short, the Special Ethics Adjudicator concluded that "respondent failed to timely respond to the OAE's requests, and those failures ran afoul of his

professional obligations." She found that, between February 2017 and January 2019, respondent continually failed to cooperate with the investigations by failing to provide the documents by the specified date. Although respondent did submit documents to the OAE, he did not submit them on time, nor did he notify the investigator in writing.

Recordkeeping Deficiencies (Count Three)

The Special Ethics Adjudicator concluded respondent had violated RPC 1.5(d) by failing to comply with the recordkeeping requirements of R.1:21-6. Specifically, the OAE had established the following recordkeeping violations:

> Respondents' client ledger cards not fully descriptive; he had no individual ledger card for each of his clients; he commingled clients' moneys and legal fees; his bank statements did not include appropriate designations that they were attorney accounts; he had no monthly attorney trust account three-way reconciliations; his ATA deposit slips lacked sufficient detail; his ATA and ABA receipts and disbursements journals were not appropriately descriptive; he failed to include the client identification; failed to maintain all required TD Bank ABA checks, and overdrew his trust account.
>
> [SEARpt.¶241.]

In determining the appropriate quantum of discipline, the Special Ethics Adjudicator considered, in mitigation, that respondent had refunded money owed to his clients. However, she concluded that his "ethical transgressions are

serious," particularly his knowing misappropriation of funds in the Rento matter which, invariably, results in disbarment. Accordingly, the Special Ethics Adjudicator recommended that respondent be disbarred.

The Parties' Positions Before the Board

On December 20, 2023, respondent submitted a twenty-eight-page brief, with exhibits, for our consideration. Respondent's arguments largely reiterated the same points he raised in his summation brief to the Special Ethics Adjudicator, which are not repeated here. He continued to maintain that the OAE's actions were improper and included "perjury by the OAE's sole witness, manufacturing of false evidence, lying by OAE counsel and pursuing claims that are in violation of the law . . . ." During oral argument before us, respondent again maintained that the OAE's auditor had "lied" or made "false" statements in his affidavit filed in support of respondent's temporary suspension and, further, that he had been deprived of the opportunity, until the ethics hearing, to obtain the information he needed to establish the falsity of the auditor's statements.

Regarding the Rento matter, respondent admitted having received the $10,000 buyer's deposit but maintained that because the seller (Wells Fargo) had not signed the Counteroffer until after his representation had ceased, he owed

no fiduciary obligation to hold the buyer's escrow deposit inviolate. Respondent also claimed that he believed the transaction was dead, months earlier, because the seller had failed to respond to his October 6 attorney review letter. He acknowledged, however, that Wells Fargo had not relieved him, in writing, of his obligation to hold the escrow funds inviolate pending the closing.

Finally, in response to our questioning, respondent asserted a belief that the $10,000 deposit by Loretta L. Rento was a gift for David G. Rento (the son) and, thus, when David G. authorized him to use $2,500 toward outstanding legal fees in an unrelated matter, he believed he was authorized to use those funds. He acknowledged, however, that he neither spoke with, nor obtained written confirmation, from Loretta L. Rento or David L. Rento in this regard.

The OAE, during oral argument and in its written submission to us, stated that it was relying upon the hearing record and the report and recommendation of the Special Ethics Adjudicator. The OAE disputed, however, respondent's characterization of the ethics proceedings, urging us to reject his "ad hominem attacks" and, instead, to affirm the findings and conclusions reached by the Special Ethics Adjudicator. The OAE acknowledged that the Special Ethics Adjudicator had found only one instance of knowing misappropriation (in the Rento matter) but concluded that her finding of negligent misappropriation in the remaining client matters "was appropriate." For his knowing

misappropriation of client funds in the Rento matter, the OAE urged that we recommend to the Court that he be disbarred.

Analysis and Discipline

As a preliminary matter, we find that the Special Ethics Adjudicator correctly resolved all pre- and post-hearing motions and objections argued by the parties. Further, to the extent that respondent raised any constitutional objections, the Special Ethics Adjudicator correctly observed that those objections are reserved for the Court. See R. 1:20-15(h).

Violations of the Rules of Professional Conduct

Following a de novo review of the record, we determine that the Special Ethics Adjudicator's finding that respondent committed unethical conduct is fully supported by clear and convincing evidence. Specifically, we determine that, in the Rento matter, respondent knowingly misappropriated client and escrow funds, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner. Consequently, we recommend to the Court that he be disbarred. We also agree with the Special Ethics Adjudicator's other findings of misconduct.

The Rento Real Estate Matter

In the Rento matter, there is no dispute that, on October 3, 2016, respondent received a $10,000 deposit in his TD Bank ATA, via wire transfer, toward the purchase of real estate from Wells Fargo by his client, David L. Rento. Respondent's own bank records prove that a $10,000 wire transfer was initiated by Roberta L. Rento, David L. Rento's wife, and was intended as an earnest money deposit toward the purchase of the Wells Fargo property.

Following his receipt of the $10,000 buyer's deposit, respondent, in his October 6, 2016 letter to the seller's listing agent, Crivello, acknowledged his role as a fiduciary by representing that the buyer's deposit would be held in "the [b]uyer's attorney's non-interest bearing trust account." Further, respondent added, "[a]s stated in the Contract, you are holding $5,000. I received a wire from Mr. Rento and have $10,000 in my Trust Account on this matter." (Emphasis added). Respondent then reaffirmed his role at least as a fiduciary, if not as an escrow agent, by drafting the undated rider to the real estate contract; confirming David L. Rento as the buyer; stating the "[b]uyer's deposit shall be held in the [b]uyer's attorney's non-interest bearing trust account;" and scheduling the closing to take place at his law office on November 30, 2016.

Thus, having established his role as the buyer's attorney for the real estate transaction and fiduciary, or escrow agent, for the purpose of holding the buyer's

$10,000 deposit, respondent was obligated to hold the escrow funds, inviolate, unless both parties to the transaction authorized the release or disbursement of those funds.

Misappropriation of client trust funds is defined as:

> 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.]

As elaborated by the Court in In re Noonan:

> 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).]

More than forty years after Wilson, the Court re-affirmed its "bright-line rule . . . . that knowing misappropriation will lead to disbarment." In re Wade, 250 N.J. 581 (2022). In Wade, the Court observed that "[w]hen clients place money in an attorney's hands, they have the right to expect the funds will not be used intentionally for an unauthorized purpose. If they are, clients can confidently expect that disbarment will follow." Id. at 39.

Thus, to establish knowing misappropriation of client funds, the evidence must clearly and convincingly demonstrate that the attorney used entrusted funds, knowing they belonged to a client and knowing that the client had not authorized him or her to do so. Intent to steal or defraud and dishonesty are irrelevant. So long as the attorney knows the funds are not the lawyer's and knows that the client has not consented to the taking, the absence of evil motives, the good use to which the funds are put, the attorney's good character, and the lack of prior discipline, are all irrelevant.

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). The Court's decision in Hollendonner 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.

We conclude that the record in this matter clearly establishes that the $10,000 deposit in respondent's TD Bank ATA, on October 3, 2016, constituted escrow funds. As we opined in In the Matter of Robert H. Leiner, DRB 16-410 (June 27, 2017):

> [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.
>
> [Id. at 21.]

The Court agreed. In re Leiner, 232 N.J. 35 (2018).

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

Here, respondent admittedly did not have permission from Wells Fargo, the seller of the property, to use the escrow funds.

Thus, when respondent's TD Bank ATA balance, for the period spanning October 3, 2016 (the date of the deposit) to December 19, 2016 (when he transferred the $10,000 deposit to successor counsel), repeatedly dropped below $10,000, respondent committed knowing misappropriation, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner.

We reject respondent's various defenses, which he failed to establish by clear and convincing evidence.[10]

First, respondent extensively argued that, on October 3, 2016, when he accepted the $10,000 deposit on David L. Rento's behalf, there was no valid or enforceable real estate contract. Rather, respondent maintained that the real estate contract was not fully executed until December 14, 2016, when Wells Fargo signed the Counteroffer and, at which time, respondent had been replaced by successor counsel. According to respondent, in the absence of an enforceable real estate contract during the course of his representation, he was not obligated to hold the funds in escrow and had no fiduciary obligations to Wells Fargo.

We reject this argument. Even in the absence of a fully-executed real estate agreement, respondent accepted the deposit funds, as the buyer's attorney, as

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[10] "The burden of proof in proceedings seeking discipline . . . is on the presenter. The burden of going forward regarding defenses . . . relevant to the charges of unethical conduct shall be on the respondent." R. 1:20-6(c)(2)(C).

evidenced by his October 6, 2016 letter to Crivello. Specifically, respondent deposited the $10,000 in this attorney trust account and, three days later, informed the seller's agent (Crivello) that he was holding those funds, in trust, toward the purchase of the Wells Fargo property. The absence of a formal contract neither diminishes nor negates respondent's fiduciary obligation to hold those funds, inviolate, on behalf of the interested parties. As the Special Ethics Adjudicator observed, it would set dangerous precedent if attorneys, who are given client money or escrow funds to be held for third parties, are permitted to use those funds "for their own purposes without client consent and unless and until all contracts are finalized and executed among the parties." We previously have held that there "is no need for a formal escrow agreement or other writing to conclude that funds held by an attorney are escrow funds. Rather, the relationship between the relevant parties underpins the conclusions . . . ." See In re Aaroe, 241 N.J. 532 (2020) (we found that, collectively, the documents underlying the transaction functioned as an escrow agreement, because they bound the attorney to disburse the funds in a particular manner; the Court agreed, and the attorney was disbarred for his knowing misappropriation of the escrow funds).

Even if we were to accept respondent's argument that, based upon the absence of a fully-executed contract, he was not required to treat the funds as

escrow funds and, thus, did not require Wells Fargo's authorization to use the funds, he remained obligated, by virtue of Wilson and its progeny, to hold those funds, inviolate, on behalf of his client, David L. Rento.

Respondent asserted that he was authorized by David G. Rento (the son), to use $2,500 of the $10,000 buyer's deposit toward legal fees owed in an unrelated matter involving his business. However, the funds belonged to Roberta L. and David L. Rento, and not David G. Rento. Accordingly, any authorization for use of those funds should have come from David L. Rento.

Nevertheless, even if we accept that he was permitted to use $2,500 of those funds, it is undisputed that respondent's ATA balance repeatedly dipped below $10,000 and, more importantly, dropped well below $7,500 during the relevant timeframe. In fact, on November 30, 2016, after disbursing an ATA check to himself in the amount of $4,000 for a "move," respondent's ATA balance was $4,618.25, creating a shortage of at least $2,881.75. Respondent offered no evidence and, indeed, did not assert he had authorization to use or disburse more than $2,500 of those funds.

Certainly, a reasonable, good-faith belief of entitlement to the funds will sometimes defeat a finding of knowing misappropriation, even if that belief turns out to be mistaken or erroneous. See In re Cotz, 183 N.J. 23 (2005) (the attorney reasonably believed that he had more funds in his trust account than

were actually on hand; because he had forgotten that he had borrowed $9,000 from a client, some of the monies in his trust account that he believed were his actually belonged to a client; in addition, the bank where the attorney maintained his accounts erroneously had debited more than $10,000 against his trust account, instead of his business account, when business account checks were returned for insufficient funds; because the attorney did not reconcile his trust account, he failed to detect these chargebacks; the attorney, thus, reasonably, but mistakenly, believed that he had $19,000 in his trust account and was not aware of the shortage; the attorney received a six-month suspension for the misconduct).

However, disbarment invariably will result when an attorney possesses an unreasonable belief of entitlement to the misappropriated funds. See In re Mason, 244 N.J. 506 (2021) (finding that the attorney knowingly misappropriated escrow funds 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; the attorney lacked any reasonable belief that the investors suddenly were willing to risk their investments at the same time they had been pressing him to return their funds).

The burden of proof is on the attorney to establish the reasonableness of the belief:

> Respondent also testified that whenever he withdrew escrow fees in advance of a closing, the withdrawal was based on his assumption that he had an equivalent "cushion" in his trust account. However, respondent did not attempt to offer any specific factual basis for that assumption, and respondent's own expert testified that when he performed a reconciliation of the trust account he determined that "there weren't always sufficient funds on hand, and he was always indeed out of trust." Respondent's erroneous belief that he had an equity cushion was unfounded, and respondent failed to offer evidence to sustain the contention that his belief in the existence of an adequate cushion was reasonable or justifiable.
>
> [In re Mininsohn, 162 N.J. 62, 73-74 (1999).]

Here, respondent failed to offer credible evidence that he possessed a reasonable, good-faith belief that he was authorized to use the $10,000 escrow funds. However, even accepting, arguendo, all of respondent's various defenses and arguments, he was obligated to hold, in trust, at least $7,500 on David L. Rento's behalf. He offered no explanation that would justify his use of more than the $2,500 for which he purported possessed authority to use. In a light most favorable to him, he clearly invaded the $7,500. Thus, respondent knowingly misappropriated client and/or escrow funds, in violation of RPC 1.15(a), and the principles of Wilson and Hollendonner.

As a result of respondent's knowing misappropriation of entrusted funds in the Rento matter, the OAE also charged him with having violated RPC 8.4(b). Specifically, his actions constituted the misapplication of entrusted property, in violation of N.J.S.A. 2C:21-15, which provides, in relevant part, that "[a] person commits a crime if he applies or disposes of property that has been entrusted to him as a fiduciary." A violation of RPC 8.4(b) may be found even where, as here, the conduct does not result in criminal charges. In re McEnroe, 172 N.J. 324 (2002). We conclude that respondent's knowing misappropriation of escrow and/or client funds violated N.J.S.A. 2C:21-15, which, in turn, constituted a violation of RPC 8.4(b) and RPC 8.4(c).

The Williams, Kazi, Liguori, Grant, and Kwantoro Client Matters

In addition to his knowing misappropriation of client and/or escrow funds in the Rento matter, respondent committed additional misconduct in five other client matters. Specifically, the evidence clearly and convincingly established that respondent negligently invaded and, thus, failed to safeguard, client funds in the Williams, Kazi, Grant, and Kwantoro matters, in violation of RPC 1.15(a), by allowing his ATA balance to repeatedly drop below the amounts he was obligated to hold, inviolate, on behalf of each client. We agree with the Special Ethics Adjudicator's reasoning, however, that the evidence failed to establish

respondent's knowing misappropriation of funds in the Williams, Kazi, Grant, and Kwantoro matters, as the OAE had alleged. Further, respondent commingled client funds with his personal funds by depositing, in the Kazi matter, the Boonton property tax refund in his ABA rather than his ATA, in violation of RPC 1.15(a).

Failure to Cooperate with Disciplinary Authorities

Next, we determine that respondent failed to fully cooperate with the OAE's investigation in this matter, in violation of RPC 8.1(b). Respondent's dilatory responses necessitated the OAE's repeated filing of its petition for his temporary suspension and, ultimately, resulted in the Court ordering his temporary suspension. The fact that respondent eventually cooperated with the OAE's investigation, resulting in his reinstatement to the practice of law, does not negate his violation of this Rule.

It is well-settled that cooperation short of the full cooperation required by the Rules has resulted in the finding that the attorney violated RPC 8.1(b). See, e.g., In the Matter of Christopher Roy Higgins, DRB 19-456 (November 19, 2020) at 18-19 (the attorney failed, for more than seventeen months, to comply with the OAE's numerous requests for information and written responses to the matters under investigation, necessitating his temporary suspension by the

Court; although the attorney ultimately filed a reply to the ethics grievance, brought his recordkeeping deficiencies into compliance, and stipulated to his misconduct, we concluded the lengthy period of non-compliance constituted a failure to cooperate, violative of RPC 8.1(b)), so ordered, 247 N.J. 20 (2021); In the Matter of James H. Wolfe, III, DRB 18-107 (September 6, 2018) at 12 (we determined the attorney had violated RPC 8.1(b) by failing to cooperate with the OAE for more than three years and, even after the Court ordered him to comply, the attorney initially did so only in part, and later, not at all), so ordered, 236 N.J. 450 (2019).

Recordkeeping Violations

Respondent also committed numerous recordkeeping violations, in violation of RPC 1.15(d). Specifically, respondent failed to maintain fully descriptive client ledger cards; failed to maintain separate client ledger cards; conducted ATA transactions unrelated to the practice of law; used improper ATA and ABA designations; failed to conduct ATA three-way reconciliations; maintained ATA deposit slips with insufficient detail to identify each item of deposit; failed to maintain fully descriptive ATA and ABA receipts and disbursements journals; and failed to maintain cancelled TD Bank ABA checks.

In addition, the OAE identified thirteen cash withdrawals from respondent's ATA, totaling $11,575.00.

In sum, respondent committed knowing misappropriation of entrusted funds, in violation of RPC 1.15(a), and the principles of Wilson and Hollendonner; RPC 1.15(a) (four instances – negligent misappropriation and failure to safeguard entrusted funds); RPC 1.15(a) (commingling); RPC 1.15(d); and RPC 8.1(b). We determine to dismiss the charges pursuant to RPC 1.15(b) and RPC 8.1(a).

Conclusion

The crux of this case is respondent's knowing misappropriation of entrusted funds, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner, violations which mandate his disbarment. Regardless of any mitigating factors, because respondent knowingly misappropriated escrow and/or client funds that had been entrusted to him, 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 his additional ethics violations.

We, thus, recommend to the Court that respondent be disbarred.

Member Rivera was absent.

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

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

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Stephen N. Severud
Docket No. DRB 23-248

Argued: January 18, 2024

Decided: May 2, 2024

Disposition: Disbar

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

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