SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 25-162
District Docket No. XIV-2021-0148E

In the Matter of David R. Cardamone
An Attorney at Law

Argued
October 23, 2025

Decided
January 20, 2026

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

Shalom D. Stone appeared on behalf of respondent.

Corrected Decision

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Introduction

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

This matter was before us on a recommendation for disbarment filed by a Special Ethics Adjudicator (the SEA). The formal ethics complaint charged respondent with knowing misappropriation of entrusted funds, in violation of 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), and with having violated RPC 1.2(d) (assisting a client in conduct that the lawyer knows is illegal, criminal, or fraudulent); RPC 1.4(d) (failing to advise a client of the limitations on the lawyer's conduct, when the client expects assistance not permitted by the Rules of Professional Conduct); RPC 1.15(a) (failing to safeguard funds in which a third party has an interest); and RPC 1.15(b) (failing to deliver to the client any funds or other property the client is entitled to receive).

Although we unanimously determine that respondent violated the Rules of Professional Conduct, we are unable to reach a consensus among the six participating Members regarding the proper quantum of discipline for his misconduct. As set forth below, three Members recommend the imposition of a three-month suspension and three Members recommend the imposition of a censure.

Ethics History

Respondent earned admission to the New Jersey bar in 2010. He has no prior discipline. During the relevant timeframe, he was a non-equity partner at a firm (the Firm) in Red Bank, New Jersey. Currently, he maintains a practice of law in Shrewsbury, New Jersey.

Facts

Background

During his employment with the Firm, respondent handled real estate, family law, and estate administration and litigation matters. He was a signatory for the Firm's attorney trust account (ATA) at PNC Bank. Frank Gaudio, Esq., the managing partner for the Firm, supervised him.

Respondent was not responsible for recordkeeping at the Firm. Thus, he did not routinely review checks received by the Firm in real estate matters or oversee entries on the client ledgers cards for the matters he was handling. However, he occasionally would authorize wire transfers and approve disbursements of trust funds in connection with his client matters. He would communicate with the Firm's paralegals and bookkeeper concerning the trust funds handled in connection with real estate matters. The Firm did not require him to obtain approval from Gaudio, or anyone else, before disbursing trust

funds to clients or third parties.

The Andre Higgs Matter

Commencing in September 2020, the Firm represented Andre Higgs in connection with the sale of his residential property in Watchung. At the time, Higgs was serving a life sentence at the New Jersey State Prison, in Trenton, following his criminal conviction for murder.

On or about October 7, 2020, given his incarcerated status, Higgs executed a power of attorney, authorizing the Firm to act on his behalf in connection with the real estate transaction. On October 28, 2020, respondent, as Higgs's power of attorney, executed an agreement to sell the property to K.C. and T.C. (the Buyers) for $855,000. On November 5, 2020, the Buyers issued an $85,500 check, representing an earnest money deposit, payable to the Firm, which the Firm deposited in the ATA five days later.

In December 2020, the title search for the property revealed a September 2006 child support judgment for $4,137.99, a May 2008 first mortgage in favor of M&T Bank (formerly Hudson City Savings Bank) (M&T) for $600,000, and a June 2015 bail bond mortgage in favor of the State of New Jersey and Essex

County for $1,000,000.[1] The title company required proof that the child support judgment was "paid current and no arrearage exists as the time of closing," and further required "cancellation or other disposition" of the 2008 and 2015 mortgages on the property.

Following the title search, Higgs retained the Firm to assist him in resolving child support and college contribution issues with A.C., who held the judgment for child support against him.

Prior to the January 29, 2021 closing, a Firm paralegal, Ann Marie Colelli, obtained the payoff statement for the M&T mortgage, reflecting a payoff amount of $399,253.25 through January 29, 2021, which she forwarded to the Buyers' attorney, David Francis, Esq., and the settlement agent, John Kessler, on January 26, 2021. In addition, Colelli forwarded drafts of the seller conveyance documents to Francis and Kessler and asked that the documents "be reviewed for accuracy."

On January 27,2021, after obtaining approval from Kessler concerning the form of the seller conveyance documents, respondent executed the documents on behalf of Higgs and forwarded them, via overnight mail, to the Buyers' attorney. That same date, he informed Francis and Kessler that A.C. had agreed

[1] The June 18, 2015 mortgage held by the State of New Jersey and the County of Essex was given by Higgs as a security for his bail bond while his criminal charges were pending.

to execute a warrant to satisfy judgment for the child support, with the condition that respondent would hold $75,000 of the sales proceeds as security to pay any outstanding child support and college expenses owed by Higgs to A.C. Respondent prepared an escrow agreement providing that the Firm would receive and hold in escrow $75,000 of the total sale proceeds paid to Higgs until either Higgs and A.C. reached an agreement or the court entered an order resolving child support arrears and college expense reimbursement.

On January 28, 2021, Colelli informed Kessler that Higgs owed the Firm $2,000 in legal fees.

On January 28 and January 29, 2021, respondent, Francis, and Kessler discussed how to resolve the 2015 bail bond mortgage. On January 28, 2021, at 9:20 p.m., after consulting with Higgs's criminal attorney, respondent conveyed to both Francis and Kessler that the criminal matter had resolved the rights under the mortgage and he further stated that he "would work on it to get this cleared up ASAP." In an e-mail sent at 10:44 p.m. that night, Francis emphasized to respondent that "this literally has to close tomorrow or the loan will be denied because crucial docs [sic] are expiring . . . We just talked to the mortgage guy they cannot extend it."

The next morning, at 9:53 a.m., respondent sent Francis and Kessler a copy of an October 31, 2018 court order granting Higgs's motion to cancel the

mortgage of record. Later that morning, Francis informed respondent and Kessler, via e-mail, that the title company required that $20,000 be held in escrow as security for the bail bond mortgage.

In reply, Kessler forwarded the executed seller's side closing documents and an escrow agreement concerning the $20,000 that the title company would hold in escrow until the recording of the discharge of the bail bond mortgage. The closing documents included the American Land Title Association (ALTA) settlement statement for the seller and a three-page closing disclosure. However, the ALTA statement failed to itemize the M&T mortgage or the legal fees for the Firm. Moreover, although the closing disclosure included the line items for the payoff of the M&T mortgage and the seller's legal fees, the document failed to include the amounts.

On January 29, 2021, the day of the closing, respondent was working from home, and his internet service was out. As a result, he reviewed the proposed closing documents on his cellular telephone and, thus, failed to notice that the documents did not properly deduct the M&T mortgage or the seller's legal fees from the funds owed to the seller. Higgs then authorized respondent to execute the closing documents on his behalf. Respondent, thus, directed his assistant, Bobbie Condello, to sign his name on behalf of Higgs on the closing disclosure and the ALTA statement.

After reviewing the closing documents, Colelli mentioned to respondent that the documents did not include the legal fees; she did not mention, however, that the documents did not include a debit for the M&T mortgage.

On January 29, 2021, at 2:12 p.m., respondent sent an e-mail to Kessler and Francis requesting to add the $2,000 legal fee to the settlement documents. Francis did not mention to respondent or Kessler that the closing documents did not include a debit for the M&T mortgage. Kessler amended the closing disclosure and ALTA statement to include only a $2,000 deduction for the legal fees. Condello then executed the amended documents, in respondent's name, on behalf of Higgs.

Respondent directed Condello to execute an escrow agreement giving the title company permission to hold $20,000 of the sale proceeds in escrow pending the discharge of the bail bond mortgage. Neither respondent nor Colelli noticed, when reviewing the closing documents, that the "net amount due to seller" was "correspondingly higher" than it should have been.

On January 29, 2021, following the closing, the settlement agent issued checks in the amounts of $619,438.02 and $75,000, both payable to the Firm's ATA, and a separate check in the amount of $2,000, also payable to the Firm, toward legal fees. Respondent did not recall reviewing the checks and, on February 3, 2021, the Firm's bookkeeper deposited the two larger checks in the

Firm's ATA. As of that date, the Firm held $779,938.02 in escrow on Higgs's behalf.

On February 19, 2021, Higgs sent respondent a letter directing him to "immediately wire the proceeds from the sale" to his son, Andre Stewart, in Euless, Texas. That same date, respondent forwarded Higgs an authorization to wire the sale proceeds to the Bank of America account maintained by Stewart, which Higgs executed.

On March 5, 2021, respondent sent Higgs a letter enclosing the retainer agreement for the representation concerning the child support dispute with A.C. and a proposed consent order resolving A.C. child support and college contribution claims. He further requested that Higgs execute an authorization to (1) release escrow funds to satisfy A.C.'s claims pursuant to the consent order, (2) pay the legal fees incurred in connection with the dispute with A.C., and (3) transfer the remaining funds to Stewart.

On March 9, 2021, Higgs executed the authorization to release the funds to A.C. and to pay the legal fees but added a handwritten notation – "as per conversation on 3/9/21" the transfer to Stewart was "on hold until my consent." On or about March 11, 2021, Higgs executed the retainer agreement and the consent order.

On March 18, 2021, the Firm's bookkeeper issued a $22,249 ATA check

to satisfy A.C.'s claims and a $2,500 ATA check to pay the Firm's legal fees. As of that date, the Firm was holding $755,129.02 in the ATA on behalf of Higgs.

On April 6, 2021, respondent noticed that the Firm was holding $755,129.02 in escrow for Higgs; that was when he realized that the title company had failed to pay off the M&T mortgage at the January closing. He was aware that the $755,129.02 ATA balance included $399,253.25 in funds that he "assumed would have been used by the settlement agent to repay the loan at the closing," and that M&T would claim additional interest on that amount. That same date, he notified Higgs of the error and advised him that the title company and the settlement agent should be notified that the M&T mortgage "had not been paid at closing, and to negotiate a resolution whereby Higgs would be responsible only for the payoff amount as of the closing date, while the title company would be responsible for any further interest that had accrued." He further recommended to Higgs that the $399,253.25 be "paid directly to the lender, to be applied to the loan balance to reduce the interest that was accruing," a suggestion Higgs rejected.

In response, Higgs stated that (1) he "would handle all negotiations with the title company and the lender to ensure the loan was satisfied;" (2) respondent "was not authorized to communicate with the title company or the lender, or the

Buyers' attorney on Higgs' behalf;" (3) respondent was not authorized to "make any payments to the title company or the lender;" (4) the attorney-client relationship was terminated; (5) he no longer authorized the Firm to maintain his funds in its ATA; and (6) respondent must immediately release all funds to Stewart. Respondent then advised Higgs that he could not avoid paying back the mortgage and that the Buyers, the title company, and M&T would file lawsuits against him if he failed to return the funds. Higgs stated that he would "address the situation with the title company and lender" in the event of a lawsuit.

As of April 6, 2021, no party had made a claim to respondent concerning the improper disbursement at the closing. Nevertheless, he knew that M&T, the Buyers, and the title company would suffer harm if the lender was unable to recover the funds from Higgs to satisfy the outstanding mortgage. Following his telephone conversation with Higgs, respondent exchanged e-mails with Colelli stating that Higgs "was trying to pull a fast one and never have to pay the mortgage."

At the time, respondent mistakenly believed that the escrow agreement required the Firm to maintain $20,000 in escrow to secure the bail bond mortgage and did not recall that the title company was holding those funds in escrow. Colelli sent an e-mail to Kessler and Francis asking whether the title company had agreed to release the $20,000 to Higgs. Kessler agreed to confirm

with the underwriter whether respondent could release the escrowed funds to Higgs.

On April 7, 2021, in an e-mail exchange with Colelli, respondent stated:

> [Higgs] will never authorize [the Firm] to pay the mortgage at this point.
>
> . . .
>
> Because he is convinced that he will never have to pay because he will claim it was the title companies' (sic) responsibility to handle it and that since it was their mistake they must pay on his behalf.
>
> I do not agree, but I also do not care as long as we send a CYA letter.
>
> . . .
>
> This is fine.
>
> It is wrong, but my hands are also tied because I cannot make the payment without his approval.
>
> I never would have realized it until I was going through the numbers with him. Had he not been in prison, that would have never even happened.
>
> I just need this man out of my life.
>
> [CEx23].[2]

He further directed Colelli to draft a letter to Higgs, advising him that he remained "personally responsible to pay the mortgage" and that he "should

[2] "CEx." refers to exhibits attached to the formal ethics complaint, dated November 30, 2023.

retain sufficient funds to pay off the mortgage." In turn, Higgs reiterated that he had terminated the attorney-client relationship and demanded that respondent release the funds to him.

At the direction of Higgs, respondent failed to notify Kessler or Francis that the M&T mortgage had not been paid off at closing and that, instead, the Firm had received the excess funds. He further failed to notify either Gaudio or the Firm's other named partner, prior to his release of the funds, that the settlement agent had made an error and, as a result, the Firm had been holding an additional $399,253.25 in the ATA since February 3, 2021.

On April 8, 2021, although he did not believe that he needed authorization, respondent transferred $735,129.02 to Stewart, via wire, as directed by Higgs, without the authorization of the Buyers, M&T, or the title company. However, because he had not yet heard back from Kessler concerning the $20,000 to secure the bail bond mortgage, respondent retained that amount in escrow in the Firm's ATA.

That same date, respondent forwarded a letter to Higgs stating:

> Please be advised that we are now aware that your mortgage with M&T Bank . . . was not paid as part of closing but upon your direction, we will not be making payment from the funds we are holding in trust on your behalf.
>
> As I advised you on our phone call, there is a strong likelihood that in the future the Buyer and/or Title

> Company will become aware of the fact that the pay off was never sent, likely upon the mortgage company filing a Foreclosure action. Although the Title Company may defend the Purchaser as to this suit, you would still be personally responsible to pay the mortgage pursuant to the terms of the mortgage and note you originally signed. As such, you should retain sufficient funds to pay off the mortgage, as you cannot anticipate being relieved of this obligation.
>
> [CEx25.]

On April 14, 2021, following his receipt of an e-mail from Kessler attaching a copy of the escrow agreement Condello signed on Higg's behalf, respondent realized that the title company was holding the $20,000 in escrow pending the formal discharge of the bail bond mortgage. Accordingly, that same date, respondent disbursed the remaining $20,000 in the Firm's ATA to Stewart, via wire.

Subsequently, Gaudio discovered that respondent had released the escrow funds to Stewart on April 8, 2021, including the $399,253.25 for the M&T mortgage. Respondent sent Gaudio an e-mail detailing what had occurred in the Higgs matter. Gaudio expressed concern that respondent may have committed malpractice by releasing the funds.

On April 21, 2021, respondent sent Gaudio an e-mail explaining that he had spoken with Higgs's criminal attorney, John McMahon, Esq., who confirmed that Higgs would not return the money. Respondent asserted that he

did not commit any legal malpractice and that he could not notify the title company of the situation without exposing the Firm to a potential "conflict of interest or a breach of the attorney-client privilege or something else."

That same date, Gaudio reported the incident to the Firm's malpractice carrier and encouraged respondent to report the matter to the OAE, which respondent did, on April 22, 2021. In his grievance form, respondent summarized the events and stated that "[u]pon further reflection, [he] realized that [he] never should have sent the money to [Higgs]." He expressed concern that he had violated RPC 1.15(b).

On April 23, 2021, Gaudio attempted to contact Higgs by telephone, to no avail, and then sent him a letter requesting that he direct Stewart to return the funds to the Firm. That same date, Gaudio also sent Francis and Kessler a letter informing them that the settlement agent failed to retain funds to pay off the M&T mortgage and that, subsequently, the funds had been transferred to Stewart, at Higgs's direction.

On April 30, 2021, Higgs sent Gaudio a letter requesting to know whether the Firm or the title company had committed "legal malpractice," and demanding his complete real estate file. On May 11, 2021, Gaudio forwarded a copy of the file to Higgs and repeated the request that he direct Stewart to return the funds.

On May 4, 2021, Gaudio sent Stewart a letter stating that his continued retention of the funds was a violation of the law and asserting that Stewart was conspiring with Higgs to not return the money. Stewart did not respond.

On May 16, 2021, Higgs sent Gaudio a letter demanding to know "who failed to perform their duty of care" at the closing and asserting that he had suffered damages due to the "negative [credit] reporting and interest issues." Nevertheless, Higgs refused to direct Stewart to return the funds.

On or about May 24, 2021, the Buyers and the title company underwriter filed an order to show cause against Stewart, in Tarrant County Texas, seeking, in part, an injunction restraining him from disposing of the disputed funds.

On June 10, 2021, Gaudio sent another letter to Higgs, informing him that the Firm had a conflict of interest with him and could no longer continue the attorney-client relationship. He further stated that the Firm would not perform future work on behalf of Higgs.

On June 22, 2021, Gaudio appeared remotely at the Texas hearing on behalf of the title company. The Texas court ordered Stewart to deposit $399,253.25 in the registry of the Tarrant County court. On June 30, 2021, Stewart's bank, Bank of America, filed an interpleader order and, by agreement of the parties, was permitted to deposit $398,278.25 in the registry of the Tarrant County court.

On August 20,2021, the Tarrant County court granted the Buyers' motion for summary judgment and ordered the Tarrant County District Clerk to disburse the $398,278.25 held by the registry to M&T, via certified check, dismissing all other claims. Kessler estimated that the title company had to pay $35,000 comprising additional mortgage interest accrued since January 29, 2021 and attorney's fees.

Respondent acknowledged to the OAE that he should have consulted with Gaudio before releasing all the funds to Higgs. Following his conduct in connection with the Higgs matter, he lost his job with the Firm.

Based on the foregoing, on February 23, 2023, the OAE filed a formal ethics complaint charging respondent with having violated RPC 1.2(d) by knowingly releasing the ATA funds to Higgs and, in doing so, assisting Higgs in an attempt to defraud M&T; RPC 1.4(d) by failing to inform Higgs of the Firm's limitations on releasing escrow funds and respondent's obligation to notify all interested parties; RPC 1.15(a) (two instances) by failing to safeguard the escrow funds and knowingly misappropriating $399,253.25 in escrow funds; and RPC 1.15(b) by failing to promptly notify all interested parties that the settlement agent had mistakenly failed to pay off the M&T mortgage and, consequently, had over-disbursed sales proceeds to Higgs.

The Ethics Proceeding

The Parties' Requests to Exclude Evidence

On October 9, 2024, respondent, through counsel, objected to the admission of the transcript of the OAE's June 9, 2022 interview of Gaudio, asserting that the transcript was hearsay pursuant to N.J.R.E. 802, and that Gaudio presumably would testify to the relevant facts at the hearing.

The OAE did not directly oppose the request to exclude the transcript of Gaudio's interview. Rather, the OAE objected to respondent's request to admit the disciplinary investigator's report because it summarized the evidence obtained during the underlying investigation and was inadmissible hearsay pursuant to N.J.R.E. 801. The OAE further argued that the work product doctrine and the deliberative process privilege shielded the reports and analyses created and prepared in connection with a disciplinary investigation from public access, citing Paff v. Director, Office of Attorney Ethics, 399 N.J. Super. 632, 646 (Law Div. 2007), Redland Soccer Club, Inc. v. Dept. of the Army of U.S., 55 F.3d 827, 853 (3d Cir. 1995), and In re Grand Jury, 821 F.2d 946, 959 (3d Cir. 1987).

The OAE further argued that the SEA should not mark the formal ethics complaint as one of respondent's exhibits, or move it into evidence, because it already was part of the hearing record.

In reply, respondent, through counsel, argued that the investigative report

was admissible under the following hearsay exceptions: (1) N.J.R.E. 803(b)(1) as a statement by a party-opponent, (2) N.J.R.E. 803(c)(6) as a business record, and (3) N.J.R.E. 803(c)(8) as a public record, report, or finding. He contended that Paff did not address the admissibility of an OAE investigative report but, rather, only addressed whether a common-law right of public access required the disclosure of OAE reports to the public. He argued that the question before the SEA was not whether the OAE had to disclose the report because it already had produced the report to respondent in discovery. Rather, the question was whether an already produced report was admissible in evidence. He contended that none of the cases cited by the OAE supported the argument that the investigative report was inadmissible.

On November 30, 2024, the SEA issued a decision granting respondent's request to exclude the transcript of the OAE's June 9, 2022 interview of Gaudio, reasoning that the witness was available to testify and the transcript was inadmissible hearsay. Further, the SEA determined that he would not admit into evidence either the formal ethics complaint or the investigative report.

The Ethics Hearing

Commencing on January 21, 2025, the SEA conducted a three-day ethics hearing, during which he heard testimony from the OAE investigator;

respondent; Colelli; Gaudio; Kessler; McMahon; and character witnesses.

Respondent testified that he had been dealing with Higgs for six months, describing him as "relentless" in his efforts to have the sales proceeds released to him. He stated that Higgs called him "day and night incessantly" from prison, via illegal cellular telephones. He added that the attorney-client relationship had broken down and that Higgs terminated the relationship, stating that he was no longer going to "cede to [respondent's] legal advice," and directing respondent to "not make any claims to the title company."

Respondent testified that he felt his "hands were tied" and that he "had no choice but to adhere to what [Higgs] had directed [him] to do which was to release the funds to him immediately and to not tell anybody because [Higgs] . . . was going to deal with the title company after the money was released to him." He added that Higgs was quick to point out that their telephone conversations were privileged communications and that Higgs could pursue a malpractice claim and file an ethics grievance against respondent if he did not follow his directions.

Respondent testified that he had never served as the settlement agent for a real estate transaction and that the Higgs transaction was the first time he had received real estate sales proceeds for a seller client. He stated that he drew a distinction between escrow funds and the sales proceeds held in the Firm's ATA

on behalf of Higgs, and that he believed he was not serving as an escrow agent concerning the latter funds. He added that, at the time, he believed that, because "the funds were released as seller proceeds," Higgs was "the one who had the authority to determine what to do with them moving forward subject to any litigation that may commence," and that his "paramount duty" was to follow Higgs's instructions.

Respondent admitted, however, that he knew that some of the funds received from the title company following the closing did not belong to Higgs, acknowledging that both the title company and M&T had an interest in those funds and in ensuring the payoff of the mortgage. Respondent further conceded that, by releasing the funds to Higgs, he dramatically changed the protection afforded to those funds. He testified that he was aware that the failure to pay off the outstanding M&T mortgage would harm the title company and the Buyers. He further testified that Higgs knew he could not legally retain the excess funds.

Respondent maintained that, even though his April 6, 2021 e-mail to Colelli indicated that Higgs "was trying to pull a fast one and never have to pay the mortgage," that language was inconsistent with telephone conversations in which Higgs indicated that he intended "to pay whatever was required of him out of whatever outcome of the litigation that he fully intended on engaging in this matter."

Last, respondent presented three character witnesses who offered testimony concerning his good character and reputation.

During the hearing, respondent, through counsel, objected to the SEA admitting into evidence the transcript of the OAE demand interview of respondent. The OAE, on the other hand, argued that we should have the benefit of respondent's complete statements during our de novo review of the matter. Nevertheless, the SEA excluded the transcript as "hearsay," noting that the OAE had "preserved its objection to that ruling."

The Parties' Written Summations

In his written summation to the SEA, respondent, through counsel, acknowledged that, in retrospect, the disbursement to Higgs was "improper." He asserted that the matter included an "extremely unusual fact pattern" in which "everything that could've gone wrong with the closing did go wrong," including, an incarcerated and "difficult" client; a rushed closing; pandemic protocols that prevented the settlement agent and the attorneys from being in the same room; a "very serious, and unexpected error" by the title company; and respondent working from home without access to the internet on the day of the closing.

Respondent maintained that this was "a single episode of aberrational conduct born of unique circumstance" and that he was "not likely to engage in

such activities again." He argued that the Court has noted that "disbarment is the most severe punishment, reserved for circumstances in which the misconduct of the attorney is so immoral, venal, corrupt or criminal as to destroy totally any vestige of confidence that the individual could ever again practice in conformity with the standards of the professional," and asserted that this "was not such a case."

Respondent argued that the OAE had failed to prove knowing misappropriation because such a finding requires clear and convincing evidence that the attorney knew that they had no right to the funds in question, citing In re Goldstein, 116 N.J. 1, 5 (1989), and In re Noonan, 102 N.J. 157, 160 (1986), and the OAE failed to establish, clearly and convincingly, that respondent knew that the disbursement to Higgs was improper at the time it was made. He contended that he had "acted in good faith, heeding Higgs' instructions" in the "reasonable, but mistaken, belief" of Higgs's entitlement to the funds. He maintained that he had "never dealt with a situation like this before, nor had he known of any other attorney in this situation" and the "totality of circumstances" revealed that he acted in good faith under unique circumstances.

Respondent further argued that the title company's failure to retain the funds for the M&T mortgage, and its release of all the sale proceeds to the Firm created "a constructive and involuntary bailment," citing Capezzaro v. Winfrey,

153 N.J. Super 267 (App. Div. 1977). He added that, as the bailee, he had no liability to the owner of the property unless he was guilty of bad faith or gross negligence. He asserted that, although he had made "a mistake in his professional judgment," his actions did not rise to the level of gross negligence.

In support of his recommendation that a reprimand be imposed for his misconduct, respondent cited disciplinary precedent, discussed below, in which attorneys received discipline ranging from an admonition to a term of suspension for the improper release of escrow funds. He argued that, generally, the quantum of discipline for violations of RPC 1.2(d), RPC 1.4(d), and RPC 1.15(b) is a reprimand or a censure, and that, in negligent misappropriation matters, the Court has imposed discipline ranging from a reprimand to a short term of suspension.

Respondent presented several mitigating factors, including: (1) the fact that four years had elapsed since the misconduct; (2) his lack of prior or subsequent discipline; (3) his youth and inexperience at the time of the misconduct; (4) the unlikelihood that the misconduct will recur; (5) his admission of wrongdoing and cooperation with the underlying investigation; (6) his good character and reputation; (7) his civic and charitable activities; (8) his expressed remorse; (9) the conduct was not done for personal gain; and (10) he lost his job with the Firm as a direct result of these events.

In its written summation to the SEA, the OAE argued that the underlying facts clearly and convincingly supported a finding that respondent violated RPC 1.15(a) and the principles of Wilson and Hollendonner. Specifically, the OAE argued that respondent released funds to Higgs despite knowing that other parties required those funds to pay off the M&T mortgage, and did so without the authorization of the Buyers, the title company, or M&T, all of whom he knew had legal interests in the funds.

The OAE further argued that respondent's knowledge that M&T had a right to those funds distinguishes this matter from those in which attorneys have improperly or prematurely released escrow funds based on a mistake of fact, citing In the Matter of A. Randall Drisgula, DRB 19-010 (March 29, 2019) (admonition for an attorney who released a $5,000 escrow he had agreed to hold as security for a dispute between his client (also his legal secretary) in the sale of her residence for costs to repair a pool heater after the buyer's attorney had filed a lawsuit in the special civil part; the attorney released the funds to his client because he was closing his office and relocating to South Carolina, and his client told him that she would pay any judgment against her for the pool repairs "out of pocket"); In re DeClement 214 N.J. 47 (2013) (reprimand for an attorney who failed to safeguard funds in which a client or third party had an interest, releasing a portion of the $75,000 that he had agreed to hold in escrow,

in connection with a joint venture agreement between his client and a third party, without first obtaining the third party's consent; no escrow provision governed the attorney's actions, but the $75,000 check deposited by the attorney included a notation identifying it as an escrow deposit, and the joint venture agreement identified the attorney as the "escrow attorney;" the attorney, however, was never provided with a copy of the joint venture agreement, and improperly relied on his client's assurance that he was allowed to use a portion of the escrow funds to cover expenses associated with the joint venture); In the Matter of Michael D. Landis, DRB 09-395 (March 19, 2010) (the attorney received an admonition for disbursing an $86,500 real estate deposit to his client, who was the buyer, during a contractual dispute and despite a clause in the contract that funds were to be deposited into court in the event of a disagreement between the parties; in mitigation, the attorney believed that the contract of sale was void and he lacked experience in real estate matters).

The OAE disputed respondent's claim that Higgs articulated a clear and immediate intention to represent himself because respondent did not mention the end of the representation in his April 8, 2021 letter to Higgs. The OAE argued that, even if Higgs did inform respondent that he wanted to represent himself in connection with any future litigation concerning the excess funds, that fact does not negate respondent's knowing misappropriation of the third-

party funds.

The OAE maintained that RPC 1.15(a) and RPC 1.15(b) obligate an attorney to safeguard third party funds in their ATA, and that obligation is consistent with the principles of involuntary bailment, where a person comes into possession of personal property of another "accidentally, fortuitously, through mistake, or by an agreement," and has an obligation to keep that property safe and restore or deliver it to its owner, citing State v. Carr, 118 N.J.L. 233, 234 (E. & A. 1937), and Capezzaro, 153 N.J. Super. at 271.

The OAE argued that, once the elements for knowing misappropriation were met, none of respondent's mitigating evidence could alter the quantum of discipline. Moreover, the OAE noted that the Court made clear that a respondent's "good character and fitness" and the absence of "dishonesty, venality or immorality" are irrelevant to the outcome in a knowing misappropriation case, citing Noonan, 102 N.J. at 159-60.

The OAE asserted that respondent's inexperience with or ignorance of trust accounting practices does not shield him from discipline, citing In re Berkowitz, 136 N.J. 134, 147 (1994) ("Lawyers are expected to be fully versed in the ethics rules that regulate their conduct. Ignorance or gross misunderstanding of the rules does not excuse misconduct."). The OAE further argued that, although respondent did not receive a financial benefit through the

misappropriation of the funds, he did receive the benefit of ending the representation of what he described as a "difficult" client, and he was able to get Higgs "out of his life."

The Special Ethics Adjudicator's Findings

After reviewing the evidence and testimony presented at the hearing, the SEA found, by clear and convincing evidence, that respondent had violated RPC 1.15(a) by failing to safeguard the escrow funds due to M&T, despite knowing that the title company mistakenly had disbursed the excess funds to the Firm on behalf of Higgs. The SEA determined that respondent knew that the other parties required those funds to pay off the M&T mortgage and that Higgs sought to fraudulently retain those funds. The SEA concluded that respondent recklessly, and without timely notice to the concerned parties, released the funds in an attempt to "wash his hands of the situation," in violation of his fiduciary duties.

Moreover, the SEA found that respondent's status as an involuntary bailee placed him in the position of an attorney holding escrow funds for a third party and did not create an exception to his obligations pursuant to RPC 1.15(a). The SEA determined that respondent's act of transferring the excess funds to Stewart, with the clear knowledge that the mortgage obligation remained unsatisfied, constituted a bad faith violation of his duty to deliver those funds to

M&T, as intended by the other parties.

The SEA further found that the evidence clearly and convincingly established that respondent failed to promptly notify all concerned parties that he had received the excess funds, in violation of RPC 1.15(b). The SEA concluded that these unfortunate facts were a direct result of respondent's ignorance of the Rules and his efforts to create an "information bubble," which excluded the other interested parties, buttressing his mistaken belief concerning the extent of his obligation to Higgs, and making him complicit in his client's scheme. The SEA further concluded that, had respondent notified all concerned parties, they would have had the opportunity to prevent the mistake he ultimately made.

Next, the SEA determined that the evidence clearly and convincingly established that respondent violated RPC 1.2(d) and RPC 1.4(d) by knowingly assisting Higgs in fraudulently retaining the excess funds and failing to inform Higgs of his limitations on such conduct under the Rules of Professional Conduct.

Last, the SEA considered the mitigation offered by respondent, including the character witnesses, but noted that mitigation is irrelevant in matters involving knowing misappropriation in violation of the Wilson rule. The SEA did not consider any aggravating factors.

In recommending respondent's disbarment, the SEA distinguished the facts of the disciplinary precedent cited by respondent, determining that those matters did not provide legal support for his position. Instead, the SEA analogized this matter to In re Aaroe, 241 N.J. 532 (2020). The SEA emphasized that, unlike the cited cases, there was no question that respondent understood that Higgs did not have a legitimate interest in the excess funds at the time he disbursed the funds.

The Parties' Positions Before the Board

In its written submissions to us, the OAE focused on the SEA's evidentiary rulings, made during the ethics hearing, pertaining, in part, to the transcript of the OAE's August 30, 2022 demand interview of respondent. Specifically, the OAE argued that, although it had referred to and read from the interview transcript during respondent's direct examination, the SEA nevertheless erroneously excluded the transcript from evidence as hearsay.

As a preliminary matter, the OAE emphasized that some of respondent's statements during the interview contradicted his testimony at the ethics hearing and, consequently, should have been admitted as an exception to hearsay pursuant to N.J.R.E. 803(a)(1)(B). For instance, during his interview, respondent told the OAE that he had spoken with Higgs on the telephone on the

day of the closing; yet, during the ethics hearing, testified that he could not recall whether he had spoken with Higgs that day. The OAE also emphasized that respondent's statements during the demand interview were statements against his interest and, thus, admissible pursuant to N.J.R.E. 803(b)(1).

Next, the OAE argued that the Rules of Evidence are relaxed in disciplinary hearings and, generally, the demand interview transcript is admissible evidence in a disciplinary matter because the transcript is often a prior inconsistent statement and is always a statement made by a party-opponent and, thus, meets the elements set forth pursuant to N.J.R.E. 803(a)(1) and (b)(1).

Last, the OAE argued that respondent failed to object to the admission of the transcript prior to the hearing, as required by the SEA's July 25, 2024 prehearing order.

In his brief to us and during oral argument, respondent, through counsel, reiterated the arguments made in his written summation to the SEA, emphasizing his argument that the OAE had failed to establish, by clear and convincing evidence, that he knew that the disbursement of the funds was improper. Although he conceded that, in retrospect, the disbursement was improper, he stressed that the mistake lasted "all of six to eight days."

Respondent contended that the Higgs transaction involved two escrow agreements, one for $20,000 related to the bail bond mortgage and one for

$75,000 related to the child support obligation, which respondent argued demonstrated that he treated escrow funds appropriately when he was acting as an escrow agent. He argued that the "totality of circumstances" revealed that he acted in good faith in a unique situation and that he erroneously believed, at the time, that releasing the funds per his client's demand was the correct course of action.

Respondent emphasized that the SEA had found that he "allowed his mistaken belief concerning the extent of [his] obligations to his client to control the outcome," and he "misappropriate[ed] funds entrusted in his care, albeit mistakenly." He also noted that the SEA found that he "did not have a bad intent nor did he personally benefit from his mistake."

Respondent argued that the misconduct in Aaroe was readily distinguishable from the instant matter because Aaroe took the money for himself, in breach of several agreements to which he was personally a party, and "in the harsh light of his deceitful conduct" in the underlying transaction. He reiterated that he did not know that the disbursement was improper and, although his ignorance of that fact did not excuse his conduct, it negated any deceit or dishonesty on his part.

In support of his position that the facts of the instant matter failed to establish his knowing misappropriation, respondent cited the same disciplinary

precedent offered in his summation to the SEA – matters involving attorneys that the Court did not disbar, despite their unauthorized release of escrow funds, when the attorney had reasonable grounds to believe they should do so and the circumstances did not otherwise demonstrate that the attorney engaged in knowing misappropriation of the funds.

Respondent focused his analysis on In re Flayer, 130 N.J. 21 (1992), in which the Court imposed a reprimand for an attorney who prematurely released escrow funds to himself, as a party to the escrow agreement, when the other party, the builder of the house he recently had purchased, ignored his letters complaining about the nonperformance of promised repairs. The attorney then arranged for the repairs himself and used the funds escrowed for such purposes, in violation of RPC 1.15(a), (b), and (c). Acknowledging the clear impropriety of the attorney's conduct, the Court determined that an early release of escrow funds to a party to the escrow agreement does not invariably result in disbarment when the attorney has reasonable grounds to believe that the purposes of the escrow have been completed and the circumstances do not otherwise demonstrate that the attorney has "made a knowing misappropriation" of the funds within the meaning of Wilson and Hollendonner.

Respondent also relied on two disciplinary matters, referenced in the

Flayer decision, in which private reprimands were imposed.[3] Flayer, 130 N.J. at 37. In one matter, the attorney released the balance of escrow funds to his client in a real estate transaction incidental to a divorce action, after he was unable to obtain bills from two of his client's creditors, with the understanding that his client would be responsible for paying those bills directly, which she failed to do. The attorney, however, failed to obtain the consent to release the monies from the other party to the escrow agreement, and we determined that, in failing to do so, he violated RPC 1.15. In imposing a private reprimand, we considered that the attorney attempted to rectify the detrimental position in which the other party was placed by preparing correspondence designed to correct damage to his credit rating because of the client's failure to pay the creditors.

The second matter referenced in Flayer, and upon which respondent relied, also was a real estate matter, in which the attorney improperly disbursed trust funds without authorization, consent, or approval from the seller or his attorney. In imposing a private reprimand, we considered that the attorney honestly believed that his client was entitled to the funds and that the attorney had taken appropriate steps to ensure that the grievant had been made whole.

Respondent maintained that four years had passed since the misconduct,

[3] Prior to 2000 (the effective date of R. 1:20-9(d)), private reprimands were considered a non-public form of discipline and, pursuant to that Court Rule, they remain confidential. Thus, our decision in this matter continues to omit references to the case names.

and he had not been the subject of any other ethics grievance or investigation and had not received any prior discipline. He reiterated that the evidence confirmed that this was a single episode of aberrational conduct, borne of unique circumstances, and that he is not likely to engage in such activities again.

Respondent further argued that the SEA properly excluded from evidence the transcript of his OAE interview because it was an out-of-court statement. He argued that the hearsay exceptions are not generally designed to admit into evidence an entire transcript but, rather, permit the admissibility of a statement that otherwise satisfies the Rule in question. He emphasized that the OAE argued that "some portions" of the transcript were admissible but failed to identify which portions of the transcript satisfied the hearsay exceptions. He asserted that the SEA properly allowed the OAE to use the interview transcript to cross-examine respondent about specific statements that he had made during his interview, which the OAE maintained were inconsistent with his trial testimony, and thus, nothing more was required.

Last, respondent argued that we should find that he negligently misappropriated the funds and that disciplinary precedent warrants discipline ranging from an admonition to a short term of suspension, citing In re McKenna, 258 N.J. 398 (2024) (admonition), and In re Lucid, 248 N.J. 514 (2021) (censure).

Analysis and Discipline

As a threshold matter, we determine to respectfully part company with the SEA's determination to exclude from evidence in this matter the transcripts of the OAE's June 9, 2020 interview of Gaudio and the August 30, 2022 demand interview of respondent. The SEA determined that the transcript of Gaudio's interview was inadmissible because the witness was available to testify at the hearing and transcript of respondent's interview was "excluded as hearsay."

R. 1:20-7(b) provides that the Rules of Evidence "may be relaxed in all disciplinary proceedings, but the residuum evidence rule shall apply."[4] Although the residuum rule precludes factual findings based on hearsay alone, it does not mandate its exclusion. Although the prior fact witness statement is likely inadmissible in a civil trial unless inconsistent with the testimony, the relaxed rules permit admission here, where the prior statements of Gaudio merely

[4] See N.J.A.C. 1:1-15.5 is titled "Hearsay evidence; residuum rule" and provides, in relevant part, that in administrative proceedings, "[n]otwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness."

In Weston v. State, 60 N.J. 36 (1972), the Court explained the residuum evidence rule:

> The rule is that a fact finding or a legal determination cannot be based upon hearsay alone. Hearsay may be employed to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony. But in the final analysis for a court to sustain an administrative decision, which affects the substantial rights of a party, there must be a residuum of legal and competent evidence in the record to support it. Id. at 51.

expanded upon background information and did not go to the heart of the ultimate finding.

Moreover, the transcript of respondent's demand interview with the OAE falls within the hearsay exceptions, pursuant to N.J.R.E. 803(b)(1), which provides that, "[a] statement offered against a party which is: (1) the party's own statement, made either in an individual or in a representative capacity," is not excluded by the hearsay rule. Here, the transcript is of respondent's own statements to the OAE during the demand interview and that document does, in fact, qualify for admission as an exception to the hearsay rule under N.J.R.E. 803(b)(1).

Based on these circumstances, we determine to relax the Rules of Evidence in this matter, pursuant to R. 1:20-7(b), and consider the transcripts in our determination of the instant matter. We do not disturb the SEA's other evidentiary rulings.

Violations of the Rules of Professional Conduct

Following our de novo review of the record, we are satisfied that the SEA's conclusion that respondent committed unethical conduct is fully supported by clear and convincing evidence. We did not, however, adopt all the SEA's findings. Specifically, we determine that respondent violated RPC

1.15(a) (failing to safeguard funds); RPC 1.15(b); RPC 1.2(d); and RPC 1.4(d). However, in our view, there is insufficient evidence to find that respondent knowingly misappropriated entrusted funds and, thus, we determine to dismiss the charge that respondent committed knowing misappropriation, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner.

Specifically, the record contains sufficient facts for us to find that respondent failed to properly safeguard escrow funds, in violation of RPC 1.15(a). He admitted that he had never acted as the settlement agent for a real estate transaction and that the Higgs transaction was the first time he had received the real estate sale proceeds on behalf of a seller client. He stated that he drew a distinction between escrow funds and the sales proceeds held in the Firm's trust account on behalf of Higgs, and that he erroneously believed he was not serving as an escrow agent concerning the latter funds. He failed to realize, at that time, that he was legally a fiduciary and then failed to fulfill his fiduciary duties to the interested third parties. Rather, he disbursed all those funds at Higgs's direction, without seeking authorization from the settlement agent or M&T. Respondent believed that, because the funds were released as seller proceeds, Higgs had the sole authority to determine what to do with the funds, and that his "hands were tied" and that he "had no choice" but to adhere to Higgs's instructions.

Although it is true that respondent's mistaken belief does not excuse his unethical conduct, it does bear directly on the issue of knowledge in the context of "knowing misappropriation." It is well-established that a reasonable, good-faith belief of an entitlement to the funds will sometimes defeat an allegation of knowing misappropriation, even if it is a mistaken or erroneous belief. See In re Cotz, 183 N.J. 23 (2005) (the attorney reasonably believed that he had more funds in his ATA than were actually on hand; because he had forgotten that he had borrowed $9,000 from a client, some of the monies in his ATA that he believed were his actually belonged to a client; in addition, the bank where the attorney maintained his accounts had erroneously debited more than $10,000 against his ATA, instead of his business account, when business account checks were returned for insufficient funds; because the attorney did not reconcile his ATA, he failed to detect these chargebacks; the attorney, thus, reasonably, but mistakenly, believed that he had $19,000 in his ATA and was not aware of the shortage; the attorney received a six-month suspension).

Although we previously have found that there "is no need for a formal escrow agreement or other writing to conclude that funds held by an attorney are escrow funds" and, further, that "the relationship between the relevant parties underpins the conclusion that particular monies constitute escrow funds," we view the unique facts of this matter differently. In the Matter of Lyn P. Aaroe,

DRB 19-219 (February 6, 2020) at 45-46. Specifically, in Aaroe, we recommended an attorney's disbarment for the knowing misappropriation of escrow funds, as well as numerous other RPC violations in connection with a real estate transaction governed by a court-approved settlement. Id. at 55. In that matter, we concluded that, collectively, the settlement documents underlying the transaction functioned as an escrow agreement, because they legally bound the attorney to disburse the real estate proceeds (the escrow funds) in a particular manner. Rather than obtaining the authorization from the other parties to the transaction, the attorney seized the opportunity to convert those funds for the benefit of himself and his clients. Id. at 43.

Buttressing our finding in that matter, the attorney in Aaroe also made numerous misrepresentations to other parties to the transaction concerning lis pendens notices encumbering title to the subject properties, and counseled his client to execute false affidavits of title for the purpose of improperly retaining the revenue from sales of property, which we determined to be violations of RPC 1.2(d); RPC 4.1(a)(1) (knowingly making a false statement of material fact or law to a third person); RPC 4.1 (a)(2) (failing to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client); and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). Id. at 34, 46, 49. In addition,

the attorney improperly disbursed a portion of the net sale proceeds from his ATA for counsel fees, despite his explicit knowledge that the funds were intended to pay the existing mortgage on the property, in violation of the principles of Hollendonner, RPC 1.15(a) and (b); and RPC 8.4(c). Id. at 36, 54. The attorney also participated in the fraudulent transfer of a separate property, in violation of RPC 8.4(b) (committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer) and (c). Id. at 41. Following his failure to appear for an Order to Show Cause, the Court disbarred him. Aaroe, 241 N.J. 532.

We find that respondent's wholesale adherence to the instructions of Higgs, whereby he proceeded to disburse the entirety of the escrow funds without seeking or obtaining the prior consent or authorization of the Buyers, the settlement agent, or M&T was reckless and in violation of RPC 1.15(a) and RPC 1.15(b). We do not find, however, on these unique facts, that his actions constituted the knowing misappropriation of entrusted funds.

Moreover, the record contains clear and convincing evidence that respondent violated RPC 1.2(d), which prohibits a lawyer from assisting a client in conduct that the lawyer knows is illegal, criminal, or fraudulent. He knowingly assisted Higgs in fraudulently retaining the sales proceeds intended to pay off the existing M&T lien on the mortgaged property. His assertions that

Higgs did not intend to retain the funds are unpersuasive because he knew that Higgs may be "trying to pull a fast one" and not pay off the mortgage, as he was legally required to do, as respondent stated in his April 6, 2021 internal Firm e-mail.

Similarly, because respondent knew Higgs's scheme was illegal and fraudulent, he had an affirmative obligation to advise Higgs that he could not assist him in retaining the excess funds, yet he failed to discharge that duty, in violation of RPC 1.4(d).

In sum, we find that respondent violated RPC 1.2(d); RPC 1.4(d); RPC 1.15(a); and RPC 1.15(b). However, we determine to dismiss the charge that respondent knowingly misappropriated entrusted funds, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner. The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

The improper release of escrow funds, without more, has generally resulted in the imposition of an admonition or a reprimand. See e.g., In the Matter of Annette P. Alfano, DRB 15-079 (May 27, 2015) (Alfano I) (admonition for an attorney who disbursed escrow funds based solely on the

instructions of a former client and without the express authorization of all parties to the escrow agreement; although the attorney admitted that she neither sought nor received the authorization of the relevant third parties to disburse their escrow funds, she avoided harsher discipline because no express, written agreement governed the disbursement of those funds); In re Holland, 164 N.J. 246 (2000) (reprimand for an attorney who was required to hold, in trust, a disputed fee in which she and another attorney had an interest; instead, the attorney took the fee, in violation of a court order; the attorney claimed that she believed that a subsequent court order had entitled her to the entire fee and, thus, she had made a mistake, rather than knowingly defied a court order; those defenses were rejected); In re Milstead, 162 N.J. 96 (1999) (reprimand for an attorney who disbursed escrow funds to a client, in violation of a consent order); In re Margolis, 161 N.J. 139 (1999) (reprimand for an attorney who breached an escrow agreement requiring him to hold settlement funds in escrow until the completion of the settlement documents; the attorney used part of the funds for his fees, with his client's consent).[5]

[5] Respondent cited additional disciplinary precedent for matters involving attorneys that the Court did not disbar following an unauthorized release of escrow funds. See e.g., In re Spizz, 140 N.J. 38 (1995) (admonition for an attorney who, against a court order, released to his client funds escrowed for the fees of a former attorney, and misrepresented to the court and to the former attorney that the funds remained in escrow; the attorney asserted that the former attorney had either abandoned or waived her claim for the fee and, thus, his obligation to hold the funds had ended); In re Susser, 152 N.J. 37 (1997) (three-year suspension for an attorney who released $5,000 held

(Footnote continued on next page)

It is well-settled that an attorney's wholesale reliance on the representations of a client is improper and, in certain circumstances, such misconduct has been met with a censure. See In re Alfano, 238 N.J. 239 (2019) (Alfano II) (censure for an attorney who agreed to serve as the escrow agent for $40,000 that a third party had advanced to her client; the attorney agreed to hold the funds in escrow and disburse them to the third party upon the closing of title to a real estate transaction; the attorney, without seeking authorization from the third party or confirmation that the business arrangement between the client and the third party had been modified, disbursed the entire $40,000 to various parties, pursuant to the client's instructions, for the benefit of the client; we determined that the attorney's wholesale reliance on the representations of her client was reckless; in addition, the attorney made blatant misrepresentations concerning the disbursement of the funds, in violation of RPC 4.1(a)(1) and RPC 8.4(c)).

Attorneys who assist their clients in conduct the attorney knows to be illegal, criminal, or fraudulent have received sanctions ranging from a reprimand to a three-year suspension. See, e.g., In re Blunt, 174 N.J. 294 (2002) (reprimand

in escrow to a party to the escrow agreement, without authorization); Flayer, 130 N.J. 21 (reprimand for an attorney who made unauthorized disbursements against escrow funds); compare In re Gifis, 156 N.J. 323 (1998) (disbarment for an attorney who borrowed escrow monies "for his personal benefit.").

for an attorney who counseled his client to enter into a sham contract of sale that ultimately was used as an exhibit to an affidavit that he contemplated submitting to a court, in an fraudulent attempt to have encroachments removed from his client's property); In re Kernan, 118 N.J. 361 (1990) (three-month suspension for an attorney who, in his own matrimonial matter, failed to inform the court that he had transferred real property for no consideration, a property he previously had certified to the court as an asset; the attorney also made a false certification; prior discipline); In re McDevitt, 231 N.J. 126 (2017) (six-month suspension for an attorney who counseled and assisted his clients in their administration of an estate, despite the client never having been lawfully appointed as an administrator; the attorney also instructed his client to forge a name on two real estate closing documents); In re Kress, 177 N.J. 226 (2003) (one-year suspension for an attorney who attempted to create a sham transaction to deceive a trustee's attorney that a mortgage had been assigned for bona fide consideration); In re Lowell, 178 N.J. 111 (2003) (three-year suspension for an attorney who counseled her matrimonial client to lie on a certification and to disobey a court order; the attorney also prepared a false certification in support of a pendente lite motion and elicited false testimony from a witness during a divorce trial).

Attorneys who violate RPC 1.4(d) have received discipline ranging from

an admonition to a term of suspension, depending on the presence of additional misconduct and any aggravating and mitigating factors. See, e.g., In the Matter of David G. Polazzi, DRB 13-252 (January 28, 2014) (admonition for an attorney whose supervisor had him prepare, as the attorney for the buyer, provisions for the use of lender funds that were not disclosed to the lender and that resulted in adjustments and credits that did not appear on the HUD-1 closing statement; we found that the attorney assisted in conduct that he knew was fraudulent, without advising the client about the limitations on his conduct; compelling mitigation included the fact that the attorney had been practicing law for just eighteen months at the time of the misconduct and was following his supervisor's instructions); In re Cerruti, 254 N.J. 121 (2023) (reprimand for an attorney who knew that the client's proposed procedure to sell a property was illegal and failed to advise him that she could not assist him advocating for the transaction; the attorney concededly told the client that the proposal was not on the "up and up" but advocated for the proposal anyway; making matters worse, the attorney sent out the illegal proposal hoping her adversary or the court would put an end to the client's requests that she pursue the issue; in mitigation, no prior discipline in thirty-four years; in aggravation, she was less than candid during the disciplinary investigation); In re Feldhake, 222 N.J. 10 (2015) (censure for an attorney who violated RPC 1.4(d), RPC 4.4(a) (engaging in

conduct that has no substantial purpose other than to embarrass, delay, or burden a third person), and RPC 8.4(d) for issuing improper subpoenas in order to circumvent a judge's order; in aggravation, the attorney revealed sensitive information obtained via the subpoena to his client); In re Bernstein, 249 N.J. 357 (2022) (two-year suspension for an attorney who agreed to represent multiple clients in jurisdictions where he was not admitted to practice; the attorney committed additional serious misconduct, including having lied about his disciplinary history on multiple pro hac vice applications; significant aggravation considered).

Although each of the foregoing matters in which we found an RPC 1.4(d) violation were fact specific regarding the individual client's expectations of legal assistance not permitted by the Rules of Professional Conduct, we view respondent's misconduct as most similar to the misconduct we addressed in Polazzi. In that matter, we imposed an admonition on the attorney who prepared real estate documents that did not properly disclose the use of funds, at the behest of a supervisor. Here, respondent failed to inform Higgs of the Firm's limitations on releasing escrow funds and respondent's obligation to notify all interested parties.

Although the unique facts of this case spare respondent, in our view, from disbarment under Wilson and Hollendonner, the seriousness of the misconduct,

as well as the other charged violations, beckons more than the admonition imposed in Polazzi.

Like the attorneys in DeClement, Holland, and Milstead, who were reprimanded, respondent improperly released escrow funds without first performing the diligence required of an attorney serving as an escrow agent. However, unlike the attorneys in Holland and Margolis, respondent's actions were not motivated by personal interest or in defiance of a court order. His improper release of escrow funds was due solely to his misplaced belief that he had a duty to follow the instructions of a client.

Like the attorney in Alfano II, who received a censure, respondent relied solely on his client's instructions to disburse the funds. However, respondent did not make any misrepresentations concerning the disbursement and, further, reported his misconduct to the OAE. However, unlike the attorneys in Kernan; McDevitt; Kress; and Lowell, who each received terms of suspension for assisting their clients in conduct the attorneys knew to be illegal, criminal, or fraudulent, respondent did not falsify any documents; direct his client to forge documents; make false statements to the court; or prepare false certifications.

Based on the foregoing disciplinary precedent, respondent's misconduct could be met with a censure. To craft the appropriate discipline in this case, however, we also consider aggravating and mitigating factors. On this aspect of

this case, we cannot reach a consensus.

Members Recommending Censure

Members Menaker, Petrou, and Rodriguez determine that respondent's conduct, though serious, warrants a censure. In the view of these Members, three other parties were responsible for reviewing the closing documents and failed to identify the error, which resulted in the settlement agent releasing all funds to the Firm without respondent's immediate knowledge. From the perspective of these Members, respondent's conduct was, at worst, negligent. Further, these Members accord some mitigating weight to respondent's unblemished fifteen-year career at the bar.

Members Petrou and Rodriguez filed a separate concurring opinion.

Members Recommending Three-Month Suspension

Chair Cuff and Members Hoberman and Modu determine that the totality of respondent's misconduct warrants a three-month suspension, with emphasis on the reckless manner in which he disbursed the entrusted funds. Specifically, these Members consider, in aggravation, respondent's complete failure to perform any due diligence to determine the appropriate course of action, despite being a seasoned real estate attorney who was aware of the legal obligation to

satisfy the primary mortgage in connection with the sale of the property. Instead of severing the attorney-client relationship or, at a minimum, simply telling his client that he would not and, indeed, could not follow his instructions, respondent blindly followed his client's directives. Making matters worse, before doing so, respondent failed to take even the most basic steps expected of an attorney, such as conducting research or consulting members of his Firm, including Gaudio, his immediate supervisor.

Conclusion

As set forth above, we unanimously determine that respondent violated the Rules of Professional Conduct. However, we are unable to reach a consensus among the six participating Members regarding the appropriate quantum of discipline. Three Members voted to recommend a three-month suspension and three Members voted to recommend a censure.

Vice-Chair Boyer and Member Campelo were absent.

Member Spencer was recused.

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

Disciplinary Review Board
Hon. Mary Catherine Cuff, P.J.A.D. (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 David R. Cardamone
Docket No. DRB 25-162

Argued: October 23, 2025

Decided: January 20, 2026

Disposition: Other

Members	Three-Month Suspension	Censure	Recused	Absent
Cuff	X			
Boyer				X
Campelo				X
Hoberman	X			
Menaker		X		
Modu	X			
Petrou		X		
Rodriguez		X		
Spencer			X	
Total:	3	3	1	2

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