Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 23-089
District Docket No. XIV-2023-0065E

In the Matter of	:
Martin David Eagan	:
An Attorney at Law	:

Corrected Decision

Argued: May 24, 2023

Decided: October 3, 2023

Diane M. Yandach appeared on behalf of the Office of Attorney Ethics.

Patrick B. Minter appeared on behalf of respondent.

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

This matter previously was before us (DRB 22-194) on a motion for final discipline filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-13(c)(2), following respondent's guilty plea and conviction, in the United States District Court for the District of New Jersey (the DNJ), for one

count of conspiracy to commit bank fraud, in violation of 18 U.S.C. §§ 1344 and 1349.[1]

On January 23, 2023, we denied the OAE's motion because, in our view, the facts contained in the record implicated the knowing misappropriation of escrow 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). Specifically, we observed that respondent admittedly had made a conscious, criminal decision to repeatedly and falsely certify that he had disbursed loan proceeds in accordance with lenders' closing instructions. Instead, respondent had distributed the loan proceeds from his escrow account to his co-conspirators in furtherance of a criminal scheme. Consequently, we remanded the matter to the OAE for further proceedings, including an investigation of whether respondent's conduct violated RPC 1.15(a) or the principles of Wilson, Hollendonner, or any other RPC.

This matter now returns to us on a second motion for final discipline filed by the OAE. In the instant motion, the OAE asserted that respondent's

[1] 18 U.S.C. § 1344 provides that "whoever knowingly executes, or attempts to execute, a scheme or artifice – (1) to defraud a financial institution; or (2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises" is guilty of committing bank fraud.

crimes 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) (knowing misappropriation of entrusted funds); RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer); and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

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

Respondent earned admission to the New Jersey bar in 1998 and to the New York bar in 1999. He has no disciplinary history in New Jersey. During the relevant timeframe, he maintained a law practice in Morristown, New Jersey

Effective February 24, 2022, the Court temporarily suspended respondent from the practice of law in connection with his criminal conduct underlying this matter. In re Eagan, __ N.J. __ (2022).

We now turn to the facts of this matter.

From August 2007 through approximately May 2010, respondent participated in a criminal scheme to fraudulently obtain Federal Housing Administration (FHA) Home Equity Conversion Mortgages, more commonly known as "reverse mortgages."

By way of background, the FHA is part of the United States Department of Housing and Urban Development (HUD) and provides mortgage insurance for loans made by FHA-approved lenders, including reverse mortgages. A reverse mortgage is a home loan that enables homeowners to convert the equity in their home into cash. A lender's decision to offer a homeowner a reverse mortgage typically is based upon the appraised value of the home, in addition to the equity available in the home. Generally, a homeowner is not obligated to repay the reverse mortgage until he or she passes away or sells the home.

To obtain an FHA-approved reverse mortgage, certain borrower, property, and financial eligibility requirements must be met. For example, a homeowner must be sixty-two-years of age or older, and the reverse mortgage amount must be based on, among other things, the lesser of the appraised value of the property or the FHA reverse mortgage limit. Homeowners seeking a reverse mortgage typically submit loan applications to a lender detailing their income; assets; monthly expenses; liabilities; and the appraised value of the home.

After a lender approves a reverse mortgage application, a settlement or closing agent, who may be an attorney, prepares a HUD-1 settlement statement, which itemizes the receipt and disbursement of funds at a real estate

closing. The closing agent prepares a preliminary HUD-1 reflecting the disbursements to be made and, at closing, the borrowers and closing agent certify that the information contained in the final HUD-1 is true and accurate. In approving and funding reverse mortgages, lenders rely upon HUD-1 statements and instruct settlement agents to accept and disburse funds consistent with the lender's closing instructions and the information contained in the HUD-1.

The bank fraud scheme underlying the instant matter consisted of at least four co-conspirators, including (1) respondent; (2) Philip Puccio, Jr., a loan officer at two mortgage brokerage firms which either controlled, or had a financial interest in, several home repair and remodeling companies, including Puccio Remodeling; (3) Rafael Peralta, an individual associated with several home repair and remodeling companies, including Puccio Remodeling, where he served as the Chief Executive Officer; and (4) Joseph Soprano, an unlicensed real estate appraiser who resided in New Jersey.[2] Additionally, Puccio and Peralta controlled the bank accounts of two financial services companies.

[2] N.J.S.A. 45:14F-6 prohibits an individual from using the title of "State licensed real estate appraiser" unless that individual is a real estate appraiser, duly licensed by the New Jersey Division of Consumer Affairs.

At Puccio and Peralta's request, respondent agreed to serve as the closing attorney for individuals seeking reverse mortgage loans, the funds from which would purportedly be used to finance home renovations performed by Puccio, Peralta, and their companies.

For twenty years, respondent maintained a "high-volume" real estate practice wherein he represented buyers, sellers, and financial institutions in various real estate transactions, including reverse mortgages. Therefore, as a closing attorney, respondent knew that he was required to (1) accurately complete the HUD-1 forms, (2) certify to the lenders that the reverse mortgage proceeds were disbursed to the homeowner-borrowers, as the lenders had instructed, and (3) disburse the proceeds in accordance with those instructions.

As part of the fraudulent scheme, Puccio and Peralta solicited elderly homeowners in northern New Jersey to apply for reverse mortgages in order to fund home repair and remodeling work. Thereafter, Soprano, using the appraisal license number of another individual who had no knowledge of the conspiracy, prepared appraisals, using photographs of the interiors of other properties, and fraudulently inflated the fair market value of the properties for which the homeowners sought reverse mortgages. Soprano prepared the false

appraisals for Puccio and Peralta to influence the lenders' decisions regarding the loan amounts to the homeowners.

After obtaining the false real estate appraisal, respondent submitted fraudulent HUD-1 forms to seven different mortgage brokers and lenders. The false HUD-1 forms concealed the fact that the loan funds were disbursed to Puccio, Peralta, and their financial services companies, rather than to the homeowners, as the lenders expressly had instructed. In fact, respondent prepared two versions of the HUD-1 forms in preparation for each real estate closing – one version for the lenders, which indicated that all loan proceeds would be paid directly to the homeowner, and a second version, concealed from the lenders, which reflected that Puccio and Peralta would receive the loan proceeds instead of the homeowner.

Once respondent received the loan funds from the lenders, he used his escrow account to improperly disburse the funds to Puccio and Peralta, for their personal benefit. Puccio and Peralta never performed the home repairs or remodeling and kept the funds for themselves. For some of the homeowners, Puccio and Peralta began demolition – purportedly in preparation for the renovations – but performed no other work. Thus, according to respondent, the "vulnerable homeowners" were left with "extensive loans and no renovations." Respondent, however, claimed that he was unaware that Puccio and Peralta

were not performing the home renovations and were, instead, retaining the funds for their personal benefit.

In connection with his participation in the bank fraud scheme, respondent received $11,648 in legal fees for serving as the closing attorney. However, he did not receive any of the fraudulent reverse mortgage funds from Puccio or Peralta.

Sometime in 2015, approximately five years after the conclusion of the criminal conspiracy, respondent began cooperating with federal agents investigating the case, providing essential information toward the prosecution of Puccio and Peralta.

On December 7, 2015, respondent executed a plea agreement with the Government wherein he admitted that he had engaged in a conspiracy to commit bank fraud that involved ten or more victims. Respondent also admitted that, for his part in the scheme, he caused a loss of more than $579,000 to the victims, whom he "knew or should have known" were vulnerable. Respondent further admitted that he "abused a position of private trust, and used a special skill, in a manner that significantly facilitated the commission and concealment of the offense."

For his role in the bank fraud scheme, on December 17, 2021, the United States Attorney for the District of New Jersey charged respondent with one

count of conspiracy to commit bank fraud, in violation of 18 U.S.C. §§ 1344 and 1349. That same date, respondent waived indictment and pleaded guilty as charged. During the plea hearing, respondent admitted that he had prepared and submitted false HUD-1 forms to seven separate lenders to conceal from the lenders that he had disbursed the reverse mortgage proceeds to Puccio and Peralta, rather than to the homeowners.

Following the plea hearing, on December 17, 2021, the Honorable Anne E. Thompson, U.S.D.J., issued a consent judgment and order of forfeiture requiring that respondent reimburse the Government $11,648, representing the criminal proceeds that he gained from his involvement in the bank fraud scheme. Respondent paid the entire forfeiture amount to the Government prior to his sentencing.

Also on December 17, 2021, respondent notified the OAE of his criminal charge and guilty plea, as R. 1:20-13(a)(1) requires.

On June 2, 2022, respondent submitted to the DNJ a presentence memorandum urging the imposition of a sentence of time served, followed by a one-year term of supervised release and the payment of restitution. In support of his recommended sentence, respondent emphasized his substantial cooperation with federal agents and his view that his criminal conduct amounted to an isolated incident. Additionally, respondent submitted twenty-

one letters from community members, friends, and colleagues, attesting to his good moral character and extensive community service. For example, respondent, through a charitable organization, hosted children from other countries seeking medical treatment in New Jersey.

On June 9, 2022, respondent appeared for sentencing before the Honorable Zahid N. Quraishi, U.S.D.J. During the proceeding, the federal prosecutor requested a downward departure from the sentencing guidelines, which called for a fifty-one to sixty-three-month term of imprisonment, due to respondent's "extensive and essential cooperation" against his co-conspirators, who since had pleaded guilty. The federal prosecutor noted that, without respondent's cooperation, it would have been "extremely difficult" to prove its cases against Puccio and Peralta. The federal prosecutor also stressed that respondent accepted responsibility for his actions and, thus, urged the imposition of a sentence of time served, followed by a one-year period of supervised release.

Also during the proceeding, respondent apologized for his conduct, took "full responsibility for [his] actions," and claimed that he was "completely embarrassed and remorseful" that he had "allowed the scheme to take place through [his] office." Respondent further maintained that his criminal conduct was "inconsistent" with his actual character.

Judge Quraishi sentenced respondent to time served and a one-year term of supervised release. Judge Quraishi also required that respondent pay $578,837.13 in joint and several restitution, with his co-conspirators, for the economic harm caused to ten victims of the bank fraud scheme. In imposing this sentence, Judge Quraishi emphasized respondent's extensive cooperation with federal agents and noted that, other than closing fees, respondent did not appear to have profited from the bank fraud scheme. Despite respondent's admissions, Judge Quraishi found no evidence that respondent knew that Puccio and Peralta had intended to steal the loan funds from the vulnerable homeowners. By contrast, Judge Quraishi found that Puccio, Peralta, and Soprano were "unbelievably more culpable" than respondent because of their intent to steal and commit fraud by creating the false appraisals.

Additionally, although Judge Quraishi observed that respondent had lived an otherwise law-abiding life dedicated to community service, he found that respondent's criminal offense was "serious." However, despite respondent's role as an attorney in the criminal scheme, Judge Quraishi considered that respondent's "involvement and culpability in [the] offense [was] fairly limited." In that vein, Judge Quraishi expressed his view that respondent "had no idea that there was a scheme to steal" from "vulnerable[,] elderly homeowners."

On June 9, 2022, respondent notified the OAE of his sentence, as R. 1:20-13(a)(1) requires.

In support of its recommendation for disbarment, the OAE urged us to find that respondent committed knowing misappropriation of escrow funds by intentionally diverting entrusted, reverse mortgage funds, contrary to the lenders' closing instructions, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner.

The OAE analogized respondent's criminal conduct to that of the disbarred attorney in In re Hand, 249 N.J. 79 (2021), who, as detailed below, induced a lender's wiring of $873,521.22 in mortgage proceeds and then intentionally disregarded the lender's closing requirements. Specifically, Hand disbursed the loan proceeds in violation of the lender's escrow instructions and in furtherance of a criminal scheme. The OAE argued that, like Hand, respondent intentionally deceived lenders, via false HUD-1 statements, in order to divert loan proceeds to his co-conspirators, in violation of the lenders' closing instructions and in furtherance of a criminal scheme.

Additionally, the OAE emphasized that respondent, as the closing attorney and escrow agent, had a fiduciary obligation to disburse the loan proceeds in accordance with the lenders' express instructions. Instead, the OAE stressed that respondent participated in a conspiracy to defraud the

lenders by diverting the loan proceeds to his co-conspirators, conduct which requires respondent's disbarment pursuant to the principles of Wilson and Hollendonner. The OAE further urged us to reiterate our rationale in Hand – that an attorney who knowingly misappropriates escrow funds contrary to a lender's closing instructions commits a violation of the principles of Hollendonner, misconduct which does not constitute a new rule requiring prospective application.

Moreover, the OAE argued that respondent "should not be given" "credit" for obtaining the vulnerable homeowners' authorizations to divert the loan funds to his co-conspirators, given that respondent knowingly disregarded the lenders' specific instructions regarding those funds. The OAE also emphasized that respondent's conduct exposed elderly, vulnerable homeowners to his co-conspirators' predatory behavior. Finally, the OAE urged us to reject respondent's proffered mitigation as irrelevant under Hollendonner.

At oral argument and in his brief to us, respondent conceded that the imposition of discipline was "both necessary and deserved," but argued that the mitigating factors warranted a one-year suspension, retroactive to his February 24, 2022 temporary suspension.

Respondent acknowledged the facts underpinning his criminal conviction, including his submission of the false HUD-1 statements to the lenders. However, respondent claimed that he was unaware that Puccio and Peralta had utilized "phony appraisals" or that they had intended to abscond with the mortgage proceeds without completing the promised repairs and renovation. Moreover, respondent asserted that, aside from his typical fees for acting as a closing attorney, he did not personally benefit from the criminal conspiracy.

Additionally, respondent argued that, at the time of his involvement in the mortgage fraud scheme, our 2021 decision in Hand, on which the OAE primarily relied, had not yet been issued. In respondent's view, prior to Hand, attorneys "had reason to believe that the submission of false HUD-1 settlement statements and the improper or unauthorized disbursement of closing funds would not necessarily result in disbarment." In support of his view, respondent argued that his conduct was akin to that of the attorney in In re Nihamin, 217 N.J. 616 (2014), who received a three-month suspension for disbursing loan proceeds in violation of the lenders' closing instructions and for preparing HUD-1 statements that falsely stated that earnest money deposits had been advanced. In light of the outcome in Nihamin, respondent claimed that, at the time he committed his offense, there was no "clear pronouncement of law" that

his misconduct would require his disbarment. Respondent, however, conceded that his criminal conduct, "on its face," "implicated" Hollendonner.

Alternatively, respondent argued that, even if Hand were applicable to this case, Hand's cumulative criminal history was more egregious than respondent's otherwise unblemished criminal record. Respondent also claimed that, unlike Hand, who knew that she and her co-defendants were defrauding lenders by procuring loans under false pretenses, he had no knowledge of the false appraisals prepared by Soprano nor the fact that Puccio and Peralta were absconding with the loan funds.

Respondent urged, as mitigation, (1) the twenty-one letters submitted to the DNJ attesting to his good reputation and character; (2) his "long and impressive history of service to his community," including work with a non-profit organization that provides medical care and services to children in need across the world; (3) his prompt cooperation with federal agents and the OAE; and (4) his lack of prior discipline in his twenty-five-year career at the bar.

Respondent also emphasized that he readily admitted his involvement in the criminal scheme and expressed contrition and remorse "through tears not shown in the transcript" of his sentencing hearing. Respondent further asserted that, in the twelve years since his criminal conduct, seven of which involved the active practice of law, he has exhibited exemplary conduct demonstrating

that he is unlikely to repeat his criminal offenses.

Finally, respondent argued that he has been subjected to substantial punishment because he was sentenced to "a term of time served and was placed on supervised release" for a one-year period, was subject to the conditions of supervised release, and paid more than $355,000 in restitution.

Following a review of the record, we determine to grant the OAE's motion for final discipline. Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). Under that Rule, a criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Magid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995). Respondent's guilty plea and conviction for conspiracy to commit bank fraud, in violation of 18 U.S.C. §§ 1344 and 1349, thus, establishes a violation of RPC 8.4(b). Additionally, the nature of respondent's crime, wherein he conceded that he had submitted fraudulent HUD-1 forms to lenders, knowing that the forms contained material misrepresentations, establishes a violation of RPC 8.4(c). Pursuant to those respective Rules, it is professional misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer," or to "engage in conduct involving dishonesty, fraud, deceit[,] or misrepresentation."

The sole issue left for our determination is the proper quantum of discipline for respondent's misconduct. R. 1:20-13(c)(2); Magid, 139 N.J. at 451-52; and Principato, 139 N.J. at 460.

In determining the appropriate measure of discipline, we consider the interests of the public, the bar, and respondent. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." Principato, 139 N.J. at 460 (citations omitted). Fashioning the appropriate penalty involves a consideration of many factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

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

"appropriate decision" should provide "due consideration to the interests of the attorney involved and to the protection of the public." Ibid.

The crux of respondent's misconduct in the bank fraud scheme was his knowing misappropriation of entrusted reverse mortgage loan proceeds.

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

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

Six years later, the Court elaborated:

> The misappropriation that will trigger automatic disbarment under In re Wilson, 81 N.J. 451 (1979), disbarment that is 'almost invariable' . . . consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking. It makes no difference whether the money is used for a good purpose or a bad purpose, for the benefit of the lawyer or for the benefit of others, or whether the lawyer intended to return the money when he took it, or whether in fact he ultimately did reimburse the client; nor does it matter that the pressures on the lawyer to take the money were great or minimal. The essence of Wilson is that the relative moral quality of the act, measured by these many circumstances that may surround both it and the attorney's state of mind,

> is irrelevant: it is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment. . . . The presence of 'good character and fitness,' the absence of 'dishonesty, venality or immorality' – all are irrelevant.
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> [In re Noonan, 102 N.J. 157, 159-60 (1986).]

In 2022, more than forty years after Wilson was decided, 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.

The Wilson rule also applies to other funds that the attorney is to hold inviolate, such as escrow funds. In re Hollendonner, 102 N.J. 21 (1985). In Hollendonner, the Court extended the Wilson disbarment rule to cases involving the knowing misappropriation of escrow funds. The Court noted the "obvious parallel" between client funds and escrow funds, holding that "[s]o akin is the one to the other that henceforth an attorney found to have knowingly misused escrow funds will confront the [Wilson] disbarment rule . . . ." Hollendonner, 102 N.J. at 28-29.

The record in this matter clearly establishes that the more than $579,000 in reverse mortgage loan proceeds that the lenders deposited in respondent's

escrow account 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.
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> [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, on ten separate occasions, respondent knowingly misappropriated a lender's escrow funds via a fraudulent and intentional breach of the lender's express closing instructions. In each transaction, respondent made a conscious, criminal decision to prepare two HUD-1 statements – one in which he certified to the lender that he had followed its instructions regarding the reverse mortgage funds and had disbursed them to the borrower, when, in fact, he had not, and a second (which he concealed from the lender), which reflected that, contrary to the lender's instructions, he had disbursed the reverse mortgage

proceeds to Puccio and Peralta, in furtherance of a mortgage fraud scheme.

Although respondent claimed that he was unaware that Puccio and Peralta did not intend to complete the home repairs and remodeling, their criminal conduct is separate from respondent's preparation of the fraudulent HUD-1 forms as a closing attorney. Specifically, respondent admitted that he had prepared the false certifications and, in so doing, breached his fiduciary duty – to seven different lenders – by failing to safeguard entrusted loan proceeds in connection with ten distinct transactions. In that vein, respondent perpetrated a fraud on the lenders by disregarding their closing instructions and leading them to believe that he had disbursed the reverse mortgage funds to the homeowners. Additionally, by illicitly disbursing the funds to Puccio and Peralta, he assisted the contractors in absconding with the reverse mortgage proceeds, leaving the vulnerable homeowners with neither the funds to which they were entitled nor the home repairs they sought. More precisely, respondent made a knowing decision to aid Puccio and Peralta by disbursing escrow funds to them, instead of to the homeowners, without the consent of all the parties who had an interest in the funds, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner.

Although respondent disbursed the loan proceeds in violation of the lender's instructions, he did not use the funds for his own pecuniary gain, in

excess of his customary legal fee. However, the fact that he did not use the funds for his own purposes is irrelevant. The Court has made clear that attorneys need not use funds for their own benefit to be guilty of knowing misappropriation. See Noonan, 102 N.J. at 160; In re McCue, 153 N.J. 365 (1998) (as trustee of a trust with considerable assets, the attorney transferred $500,000 to another trust unrelated to the first trust; the attorney was found to have knowingly misappropriated trust funds, although the record contained no evidence that the attorney used those funds for his personal benefit; he was ordered, by a court, to return compensation he had retained for himself, as trustee, in light of his fraud and negligence in administering the trust); In re Gronlund, 190 N.J. 59 (2007) (attorney serving as escrow agent in connection with a discharge of mortgage transaction improperly disbursed $3,200 in escrow funds, despite knowing that conditions precedent had not been satisfied; we found that, although it was possible the attorney had not used the funds for his own benefit, it was clear that the funds were not used for their intended beneficiary, in violation of the terms of the escrow arrangement, a knowing misappropriation).

At its essence, respondent's violation of Hollendonner in this matter is indistinguishable from that of the disbarred attorney in In re Hand, 249 N.J. 79. In that matter, Hand participated in a mortgage fraud scheme, orchestrated

by two co-defendants, whereby straw buyers fraudulently purchased from one of the co-defendants two properties, which had a combined value of $873,521.22. In the Matter of Stephanie A. Hand, DRB 21-015 (Sept. 16, 2021). The co-defendants created the straw buyers, via stolen identities obtained from unknowing residents of Puerto Rico, and leveraged fabricated records to secure mortgages in the names of the straw buyers. The lender relied on the fabricated records in approving mortgage loans, which required, as a condition precedent to funding, that the buyers advance a cash down payment of 10% of the purchase price. Hand served as the escrow agent for both transactions and purportedly represented the buyers.

In connection with both closings, Hand falsely certified, on a HUD-1 closing statement, that she had received the buyers' 10% down payments when, in fact, no down payments ever had been made. Pursuant to the lender's instructions, Hand was required to receive the down payment funds, deposit them in her escrow account, and certify that the HUD-1 contained a true and accurate statement of all funds received and disbursed. Hand falsely certified to the lender that she had followed its closing instructions and, thus, permitted the loans to close under false, criminal pretenses. Thereafter, Hand satisfied existing mortgages that one of the co-defendants had on the properties, issued a check to a company controlled by the second co-defendant, allegedly to pay

for unperformed remodeling work, and disbursed to the first co-defendant the remaining funds, which were less than the amounts listed on the HUD-1, because Hand never collected the down payments. To avert suspicion of fraud, the second co-defendant made three mortgage payments before defaulting on the mortgages, which prompted the lender to foreclose on the properties.

We determined that Hand committed knowing misappropriation of the lender's escrow funds by illegally and unethically disbursing more than $800,000 in mortgage proceeds, in two real estate transactions, in connection with her premeditated violation of the lender's escrow instructions. We further observed that Hand attempted to conceal her misconduct, via misrepresentations in HUD-1 settlement statements, in violation of her obligation to act as a fiduciary for the lender and to hold the loan proceeds in escrow until all conditions precedent for the closings were met. In recommending Hand's disbarment for violating the principles of Hollendonner, we found irrelevant the fact that Hand did not use the funds for her own purposes.

Moreover, in addition to her clear violation of Hollendonner, we found that Hand's cumulative criminal history, consisting of prior convictions for failing to file federal income tax returns, in violation of 26 U.S.C. § 7203, touched upon a second line of precedent mandating her disbarment.

The Court disbarred Hand "based on the totality of the circumstances presented in the matter." Hand, 249 N.J. at 79-80. Accordingly, in our view, New Jersey disciplinary precedent for an escrow agent's intentional violation of a lender's closing instructions remains unsettled.

Hand was, to a certain degree, an extension of our findings in In the Matter of William J. Soriano, DRB 17-179 (November 29, 2017), and our attempt to harmonize disparate analyses of attorneys who falsified HUD-1 statements in real estate closings and thereby misappropriated escrow funds.

In Soriano, the attorney served as the closing/escrow agent for a real estate transaction funded by a mortgage lender. On the HUD-1 for the closing of the loan, he misrepresented that (1) a portion of the loan proceeds had been disbursed to pay off a prior mortgage, and (2) that his clients had advanced required funds to close the transaction. His misrepresentations constituted false swearing, in violation of RPC 1.2(d) (assisting a client in conduct the attorney knows is illegal, criminal, or fraudulent) and RPC 8.4(c).

Moreover, as escrow agent and fiduciary for the lender, Soriano was obligated to satisfy an existing, $685,381 mortgage – the new lender's required condition precedent to closing and disbursement of the new loan proceeds. Soriano, however, failed to pay off the prior loan. Instead, he disbursed more than $211,000 to his client and $30,000 to his client's mother. The prior

mortgage remained unpaid for more than three years. During that timeframe, the new lender believed that the prior mortgage had been paid off and that it had a priority position as lienholder on the collateral. By failing to promptly pay off the prior mortgage, Soriano violated RPC 1.15(b) (failing to promptly disburse funds to a third party).

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

Accordingly, we found that Soriano failed to safeguard funds entrusted to him for particular purposes, thereby breaching his fiduciary duty to the new lender; perpetrated a fraud on the new lender by disregarding its closing instructions and leading it to believe that the prior mortgage had been satisfied; assisted his clients in defrauding the new lender; and made misrepresentations on the HUD-1 form by listing a $153,000 sum as cash from borrowers, when his

clients had brought no funds to the closing, and by listing $685,000 as earmarked for the satisfaction of the prior mortgage, when the mortgage was not paid off.

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

We concluded that Soriano clearly and admittedly made a conscious decision not to pay off the prior mortgage, despite the new lender's requirement that a portion of the loan be used for that purpose. Like respondent, Soriano then concealed his misconduct via a HUD-1 settlement statement. As a result, the prior mortgage was not satisfied for three years, until a foreclosure action was instituted, and the new lender did not have priority status as a lien holder during that time. Thus, based on the specific

facts and on the above principles, we viewed Soriano's misconduct "as a clear and classic violation of the principles set forth in Hollendonner." Consequently, we recommended to the Court that Soriano be disbarred.

In an Order, the Court stated its conclusion that Soriano had not violated Wilson or Hollendonner. In re Soriano, 232 N.J. 457 (2018). The Court, thus, imposed a two-year suspension. Given this posture, as we stated in the Hand decision, we conclude that Soriano is neither binding precedent under Hollendonner nor applicable to the instant case.

Rather, considering the Court's decision to impose a two-year suspension on Soriano and to disbar Hand based on "the totality of the circumstances presented in the matter," we view this case as yet another opportunity to settle and clarify New Jersey disciplinary precedent regarding the breach of fiduciary obligations by attorneys serving as escrow agents in mortgage loan transactions.

Here, it is undisputed that respondent, as the closing attorney, and a lawyer who, for decades, maintained a high-volume real estate practice, knew that he had a fiduciary duty to safeguard the reverse mortgage proceeds – funds which both the lender and the vulnerable homeowners, but not his co-conspirators, had an interest. Rather than disburse the loan proceeds to the homeowners, in accordance with the lenders' explicit closing instructions,

respondent intentionally misappropriated the funds by diverting them to his co-conspirators as he saw fit, without the knowledge or permission of the lenders. Indeed, as in Hand, respondent concealed his role in the conspiracy via the submission of fraudulent HUD-1 forms, which induced seven separate lenders to wire a total of more than $579,000 in reverse mortgage proceeds to his escrow account, based on respondent's false certification that he would disburse the proceeds in accordance with the lenders' instructions. Respondent, however, brazenly disregarded the express instructions of the lenders and distributed the proceeds to his co-conspirators, rather than to the elderly borrowers. In so doing, respondent knowingly misappropriated the lenders' entrusted loan proceeds, engaged in fraud on the lenders by leading them to believe that he had disbursed the proceeds to the borrowers, and assisted his co-conspirators in absconding with the reverse mortgage proceeds, leaving the vulnerable homeowners without the funds to which they were entitled and without the home repairs they sought.

Contrary to respondent's position, and as we noted in Hand, the proposition that an attorney who, while serving as an escrow agent, knowingly diverts reverse mortgage loan proceeds to their co-conspirators, in direct violation of a lender's closing instructions and in furtherance of a criminal scheme, is not a new rule under Hollendonner and, thus, does not require

prospective application. See Hand, DRB 21-015 at 28 (finding that Hand's decision to illegally disburse mortgage proceeds in contravention of a lender's escrow instructions was "not a novation . . . requiring prospective application). Rather, as we observed in Soriano, respondent's breach of his fiduciary obligations as the escrow agent in connection with at least ten reverse mortgage loan transactions constitutes a clear and classic violation of the principles set forth in Hollendonner.

Moreover, Nihamin, on which respondent relies, neither constitutes a long line of precedent nor binds our determination regarding the facts of this matter. Nihamin was decided in 2014, following which, in our 2017 decision in Soriano and in our 2021 decision in Hand, we modified our view of similar fact patterns involving attorneys who, while serving as escrow agents, knowingly disbursed funds in violation of a lenders' closing instructions.

Moreover, in recent history, our application of Hollendonner has not necessarily been more expansive, though it has been more finely tuned to the factual scenarios presented. See In re Mason, 244 N.J. 506 (2021) (we found that the escrow provision of a corporate operating agreement bound the attorney to safeguard investors' funds and to satisfy conditions precedent prior to any disbursement of those funds; the Court agreed, and the attorney was disbarred for his knowing misappropriation of the escrow funds), and In re

Aaroe, 241 N.J. 532 (2020) (we found that, collectively, the documents underlying the transaction functioned as an escrow agreement, because they bound the attorney to disburse the funds in a particular manner; the Court agreed and the attorney was disbarred for his knowing misappropriation of the escrow funds).

Far from creating new rules, such recent decisions reinforce the longstanding precedent set forth in Hollendonner – that attorneys who agree to serve as fiduciaries regarding funds escrowed for a particular purpose must obtain the consent of all parties to the escrow agreement before disbursing the funds. Based on that well-settled principle, we reiterate that attorneys who knowingly misappropriate escrow funds in violation of the terms of the escrow agreement will face the Wilson disbarment rule, as Hollendonner requires.

Finally, despite respondent's cooperation with federal agents[3] and his well-documented commitment to charitable causes, it is well-settled that no amount of mitigation, no matter how compelling, will suffice to overcome the disbarment sanction. See Noonan, 102 N.J. at 160. To the contrary, the mitigation illustrates respondent's ability to make sound, lawful choices,

[3] Notably, respondent's cooperation with law enforcement began five years after the criminal scheme had ended, when federal agents apprised him of their investigation concerning the criminal conduct of respondent and his co-conspirators.

juxtaposed against his willful decision to cast aside his good reputation by engaging in a reverse mortgage fraud scheme.

Accordingly, to protect the public and preserve confidence in the bar, and consistent with the principles of Wilson and Hollendonner, we determine to recommend to the Court that respondent be disbarred.

Member Boyer was absent.

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

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

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Martin David Eagan
Docket No. DRB 23-089

Argued: May 24, 2023

Decided: October 3, 2023

Disposition: Disbar

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

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