In re LaCoulton Walls
Respondent-Appellant

Commission No. 2019PR00079

Synopsis of Review Board Report and Recommendation
(March 2022)

The Administrator brought a two-count complaint against Respondent, charging him with failing to properly maintain funds belonging to others and representing a client despite a conflict of interest, in addition to other misconduct, based on his handling of escrow funds in a real estate transaction in which he represented the sellers and also served as escrow agent.

The Hearing Board found that the Administrator proved that Respondent mishandled the escrow funds and engaged in an improper conflict of interest, in violation of Rules 1.15(a) and 1.7(a) of the Illinois Rules of Professional Conduct (2010). It found the Administrator failed to prove the other charged misconduct, which is not at issue on appeal. It recommended that Respondent be suspended for 90 days for his misconduct.

Respondent appealed, challenging the Hearing Board's findings of misconduct and its sanction recommendation, and arguing that he acted properly under the terms of the escrow provision in the real estate contracts. The Review Board found that the escrow provision, which Respondent did not draft, was ambiguous and confusing. The Review Board concluded that Respondent should not be subject to discipline based on his interpretation of an ambiguous contract provision, and therefore reversed the Hearing Board's findings of misconduct. It recommended that the case against Respondent be dismissed.

BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSSION

In the Matter of: **LACOULTON WALLS**, Respondent-Appellant, No. 6197052.	Commission No. 2019PR00079

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

SUMMARY

The Administrator brought a two-count complaint against Respondent, charging him with failing to properly maintain funds belonging to others and representing a client despite a conflict of interest, in addition to other misconduct, based on his handling of escrow funds in a real estate transaction in which he represented the sellers and also served as escrow agent.

Following a hearing at which Respondent represented himself, the Hearing Board found that the Administrator had proved that Respondent mishandled the escrow funds and engaged in an improper conflict of interest, in violation of Rules 1.15(a) and 1.7(a) of the Illinois Rules of Professional Conduct. It found the Administrator had failed to prove the other charged misconduct, which is not at issue on appeal. It recommended that Respondent be suspended for 90 days for his misconduct.

Respondent appealed, challenging the Hearing Board's findings of misconduct and its sanction recommendation, and asking that this Board dismiss the charges or, in the alternative, recommend censure instead of a suspension.

For the reasons that follow, we reverse the Hearing Board's findings of misconduct and recommend the case be dismissed.

BACKGROUND

Respondent was licensed to practice in Illinois in 1987. He focuses his practice on real estate matters, but also assists his clients in other matters when asked. He has one prior disciplinary matter, in which he was suspended for one year. *See In re Walls*, 01 CH 92, M.R. 18406 (Nov. 26, 2002).

In the present matter, Respondent represented the sellers in two real estate transactions with the same buyer. The parties agreed that Respondent would serve as escrowee for the transactions and hold the buyer's earnest money. The buyer thus tendered two cashier's checks of $1,000 each to Respondent.

Each real estate contract contained directions to the escrowee in the event the sale did not close, as follows:

> In every instance where this Contract shall be deemed null and void or if this Contract may be terminated by either Party, the following shall be deemed incorporated: "and Earnest Money refunded upon the joint written direction by the Parties to Escrowee or upon entry of an order by a court of competent jurisdiction."
>
> In the event either Party has declared the Contract null and void or the transaction has failed to close as provided for in this Contract and if Escrowee has not received joint written direction by the Parties or such court order, the Escrowee ***may elect to proceed*** as follows:
>
> a) Escrowee shall give written Notice to the Parties as provided for in this Contract at least fourteen (14) days prior to the date of intended disbursement of Earnest Money indicating the manner in which Escrowee intends to disburse in the absence of any written objection. If no written objection is received by the date indicated in the Notice then Escrowee shall distribute the Earnest Money as indicated in the written Notice to the Parties. If any Party objects in writing to the intended disbursement of Earnest Money then Earnest Money shall be held until

receipt of joint written direction from all Parties or until receipt of an order of a court of competent jurisdiction.

b) Escrowee may file a Suit for Interpleader and deposit any funds held into the Court for distribution after resolution of the dispute between Seller and Buyer by the Court. Escrowee may retain from the funds deposited with the Court the amount necessary to reimburse Escrowee for court costs and reasonable attorney's fees incurred due to the filing of the Interpleader. If the amount held in escrow is inadequate to reimburse Escrowee for the costs and attorney's fees, Buyer and Seller shall jointly and severally indemnify Escrowee for additional cost and fees incurred in filing the Interpleader action.

(Adm. Exs. 1 at 7; 4 at 7 (emphasis added).)[1]

The transactions failed to close on their scheduled closing date. The sellers believed, and Respondent, as their attorney, agreed, that the buyer had breached the contracts. The sellers thus instructed Respondent not to return the earnest money to the buyers, but rather to release it to the sellers. The sellers authorized Respondent to keep $200 of the $2,000 as attorney fees.

About two and a half weeks after the scheduled closing date, the buyer's attorney sent a letter by email to Respondent, asking him to return the earnest money. According to the letter, the buyer believed the contracts were null and void because the sellers had not provided certain disclosures, the buyer was not able to secure financing, and an inspection revealed defects in the properties. Respondent believed these assertions were not valid and that the buyer was in default. However, he did not respond to the letter or inform the buyer's attorney that the sellers disputed the reasons outlined in the letter for seeking to cancel the contracts.

Five days after receiving the letter from the buyer's attorney, pursuant to the sellers' instructions, Respondent deposited both checks into his IOLTA account. The next day, he transferred $1,800 to the account of one of the sellers and kept $200 as his fees.

Respondent did not send prior written notice to the parties about his intended disbursement of the funds. Nor did he receive joint written direction from the parties or a court order authorizing distribution of the escrow funds. Respondent believed he was not required to take the steps outlined in the contracts because the contracts used the terminology "***may*** elect to proceed," which he interpreted as discretionary. He also was not willing to seek a court order resolving the matter because that would have involved filing a lawsuit against his client.

Several months following Respondent's disbursement of the funds, his IOLTA account became overdrawn.

HEARING BOARD'S FINDINGS AND RECOMMENDATION

Misconduct Findings

Rule 1.15(a)

The Hearing Board found that Respondent violated Rule 1.15(a) by disbursing the $2,000 in escrow funds in a manner that was not authorized under the escrow provisions of the contracts. It found that, in this matter, the escrow agreement in each real estate contract included directions for how and when to distribute the earnest money in the event that the sale did not close and each side claimed a right to the funds, as happened here. It found that the directions allowed the escrowee to proceed only in one of two ways, neither of which Respondent did.

It rejected Respondent's argument that the term "may" in the escrow agreement gave him discretion to choose one of the two methods of distribution provided for in the contract or to elect a third option for distribution not expressly identified in the escrow agreement. The Hearing Board reasoned that the contract language indicated that the provisions enabled the escrowee to choose only between the two specified alternatives, and that nothing in the contracts

permitted Respondent to unilaterally distribute the funds solely on the instruction of the sellers. It thus found that he distributed the earnest money improperly, and therefore violated Rule 1.15(a).

Rule 1.7(a)

The Hearing Board also found that Respondent violated Rule 1.7(a) by representing the sellers while acting as escrowee for the earnest money. It noted that, under Rule 1.7(a), a conflict of interest is present where there is a significant risk that the lawyer's responsibilities to a third person will materially limit the representation of a client, and that even a potential conflict falls within Rule 1.7(a).

It reasoned that, as sellers' attorney, Respondent was obligated to act as an advocate for the seller's interests and therefore claim the earnest money if the buyer breached the contract. But as escrowee, he was obligated to act impartially, without asserting the rights of one party against the other, even if his client believed the other party had breached the contract, citing *In re Lofchie*, 90 CH 370 (Review Bd., Oct. 13, 1993), at 11-12, *approved and confirmed in part*, M.R. 9563 (Jan. 25, 1994). It thus found that this situation presented a clear conflict of interest.

Findings Regarding Mitigation and Aggravation

In mitigation, the Hearing Board found that Respondent did not act with an intent to defraud the buyer or to improperly benefit himself. It found that he believed incorrectly, but in good faith, that a default by the buyer entitled the sellers to the earnest money and therefore that the sellers could direct disbursement of the funds. Based on that belief, Respondent distributed the funds, consistent with the instructions he received from the sellers' agent. He kept only the $200 his clients authorized as his fee.

In aggravation, the Hearing Board found that Respondent had failed to recognize how or why his conduct was improper, noting that, throughout the hearing, Respondent focused

on the buyer's behavior rather than his own conduct. It also noted Respondent's prior discipline, but did not give the prior discipline significant weight, finding it remote in time and dissimilar to the misconduct proven in this case.

Sanction Recommendation

The Hearing Board found that a suspension of three months was appropriate, noting that attorneys who have improperly represented a client despite a conflict of interest and engaged in other limited misconduct have been suspended for 90 days, citing *In re Elder*, 2014PR00019, M.R. 27334 (May 14, 2015); *In re Cahnman*, 2014PR00102, M.R. 28259 (November 18, 2016); and *In re Blanchard*, 2015PR00025, *petition for discipline on consent allowed*, M.R. 27795 (Jan. 21, 2016).

ANALYSIS

Respondent argues that the Hearing Board erred in finding that he committed misconduct based on his handling of the escrow funds. With respect to the charge based on Rule 1.15(a), Respondent contends that he acted in a manner that was consistent with the real estate contracts' escrow provision and therefore did not mishandle escrow funds. With respect to the charge based on Rule 1.7(a), Respondent argues that the real estate contracts allowed him to follow the direction of the non-breaching party, which, in his legal judgment, was the seller.

Respondent does not appear to challenge any factual findings made by the Hearing Board. Rather, his arguments solely raise questions of law, which we review *de novo*. *See, e.g., In re Morelli*, 01 CH 120 (Review Bd., March 2, 2005), at 10, *approved and confirmed*, M.R. 20136 (May 20, 2005); *In re Edmonds*, 2014 IL 117696, ¶36 (questions of law, such as whether circumstances shown by undisputed facts constitute misconduct and what interpretation is to be given to rules, are reviewed under a *de novo* standard).

We agree with Respondent that the Hearing Board erred as a matter of law in finding that he committed misconduct.

1. The Hearing Board erred in finding that Respondent violated Rule 1.15(a).

Respondent argues that he did not fail to safeguard the escrow funds in violation of Rule 1.15(a) because the buyer was not entitled to any of the escrow funds due to its breach of the contracts, and the sellers received all of the funds that they were owed. Thus, according to Respondent, his IOLTA account never fell below the amount due to his client or a third party in this matter.

In arguing that he acted properly, Respondent points to the wording of the directions in the escrow agreement, which contain the permissive word "may," rather than the mandatory words "shall" or "must." He argues that, based on the express wording in the contracts, it was reasonable for him to believe that he had discretion to choose the course of action that he did. He contends that a plain reading of the escrow agreement shows that the contracts provided two options that the escrowee "***may*** elect to follow" when the real estate transaction fails to close (Adm. Ex. 1, ¶ 26) (emphasis added)), and that, in contract law, the use of the word "may" in contracts implies discretion. He argues that the Hearing Board erred as a matter of law in interpreting the escrow agreement as giving him only two possible options, and then finding that he engaged in misconduct by not following one of those two options.

There is no question that the wording of the escrow agreement in each contract is ambiguous and confusing, given the interchangeable use of "may" and "shall" in the various provisions. The Hearing Board construed this ambiguity against Respondent, and the Administrator asks us to do the same. The overarching issue, to this review panel, is whether Respondent should be subject to discipline because the Administrator and Hearing Board disagree

with his interpretation of an ambiguous contract provision – and significantly, one that he did not draft.

We believe the answer is no. In finding that Respondent violated Rule 1.15(a), the Hearing Board reasoned that the escrow-provision language required Respondent to choose between the two alternatives specified in the contracts, and because he chose a third alternative, he therefore distributed the earnest money improperly. The flaw in that reasoning is that the escrow-provision language does not actually state – at least in clear and unequivocal terms – that Respondent had only two alternatives from which to choose in deciding how to handle the escrow funds. That is certainly one interpretation of the provision, but the inconsistent use of "may" and "shall" throughout the escrow provision as well as other contract-drafting anomalies[2] create an undeniable ambiguity in the provision's meaning.

The Hearing Board found that Respondent had a good-faith belief that the buyer had breached the contract and that he could therefore distribute the money to the sellers, based on his interpretation of the contracts. We agree, and for that reason, believe that Respondent should not be disciplined for arguably misinterpreting a poorly drafted escrow provision. We therefore recommend that the charge that Respondent violated Rule 1.15(a) be dismissed.

2. The Hearing Board erred in finding that Respondent violated Rule 1.7(a).

As with his Rule 1.15(a) arguments, Respondent's arguments regarding conflict of interest focus on the ambiguous wording of the escrow provision and the alleged breach of contract by the buyer. He contends that the real estate contracts allowed him to follow the direction of the non-breaching party, which he determined was the seller, and that he therefore followed the direction of the non-breaching seller.

Were it not for the ambiguous wording of the escrow provision in the real estate contracts, we likely would have agreed with the Administrator that a conflict arose in this matter when a dispute formed between the parties over the earnest money.[3] We likely also would have found that Respondent should have recognized that conflict and taken appropriate action. *See, e.g., In re Reich*, 08 CH 100 (Review Bd., June 20, 2012), *approved and confirmed*, M.R. 25504 (Nov. 19, 2012) (finding that attorney engaged in a conflict of interest when he took an action that favored his client over the other party to the escrow agreement, because, at that point, his responsibility as escrow agent clearly conflicted with his representation of his client and he took no steps to resolve the conflict).

However, we do not analyze this matter in a vacuum. We believe the ambiguity in the poorly drafted escrow provision impacted Respondent's entire course of conduct once a dispute arose about the escrow funds. As the Hearing Board found, he thought he was justified in turning over the escrow funds to the sellers, after he determined that the buyer breached the real estate contracts. Under these specific and unique circumstances, we do not believe Respondent should be found to have violated Rule 1.7(a). Thus, for the same reason we find no misconduct as to Rule 1.15(a) – that Respondent should not be disciplined for his arguably erroneous interpretation of an ambiguous contract provision that he did not draft – we also find no misconduct as to Rule 1.7(a). We therefore recommend that the charge against him be dismissed.[4]

CONCLUSION

For the foregoing reasons, we find that Respondent did not violate either Rule 1.15(a) or 1.7(a). Because those two rule violations constituted the only misconduct found by the Hearing Board, we recommend the case be dismissed.

Respectfully submitted,

Leslie D. Davis
J. Timothy Eaton
Charles E. Pinkston, Jr.

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Review Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on March 23, 2022.

/s/ Michelle M. Thome
Michelle M. Thome,
Clerk of the Attorney Registration and
Disciplinary Commission of the
Supreme Court of Illinois

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[1] Respondent clarified at oral argument that he did not draft the contracts, and thinks that they were provided to the parties by realtors involved in the transactions.

[2] For example, sub-paragraphs a) and b), which set forth the two courses of action that the Administrator contends Respondent was limited to, are drafted as complete sentences rather than clauses, and are not separated by the word "or." These punctuation and grammar choices, while seemingly minor, depart from contract-drafting convention that would indicate a choice between two alternatives, and add to the ambiguity of the escrow provision.

[3] To the extent the Hearing Board's analysis implies that a conflict of interest arises any time a seller's attorney also acts as escrowee, which is common practice in Illinois, we find no basis in Illinois law for that conclusion.

[4] We note that, if we had found that Respondent violated Rule 1.7(a) notwithstanding the ambiguous wording of the escrow provision, we would have recommended that Respondent be reprimanded for not recognizing that a conflict of interest existed in this situation, as we believe any other sanction would amount to punishment under the circumstances of this matter, and would not be warranted.

BEFORE THE REVIEW BOARD
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ILLINOIS ATTORNEY REGISTRATION
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DISCIPLINARY COMMISSION

In the Matter of: **LACOULTON WALLS,** Respondent-Appellant, No. 6197052.	Commission No. 2019PR00079

PROOF OF SERVICE
OF THE REPORT AND RECOMMENDATION
OF THE REVIEW BOARD

I, Michelle M. Thome, hereby certify that I served a copy of the Report and Recommendation of the Review Board on Respondent-Appellant listed at the address shown below by e-mail service on March 23, 2022, at or before 5:00 p.m. At the same time, a copy was sent to Counsel for the Administrator-Appellee by e-mail service.

Lacoulton Walls
Respondent-Appellant
thewallslawfirm@yahoo.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Michelle M. Thome,
Clerk

/s/ Michelle M. Thome
By: Michelle M. Thome
Clerk

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FILED

March 23, 2022

ARDC CLERK