BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of: ERWIN COHN, Attorney-Respondent, No. 478725.	Commission No. 2022PR00056

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission (ARDC), by his attorney, Michael Rusch, pursuant to Supreme Court Rule 753(b), complains of Respondent, Erwin Cohn, who was licensed to practice law in Illinois on November 29, 1950, and alleges that Respondent has engaged in the following conduct which subjects him to discipline pursuant to Supreme Court Rule 770:

ALLEGATIONS COMMON TO ALL COUNTS

1. At all times alleged in this complaint, Erwin Cohn ("Respondent") and his son, attorney Charles Cohn, were equal partners in the law firm of Cohn & Cohn ("Cohn & Cohn"). Cohn & Cohn had locations in Chicago and Waukegan and concentrated its practice in representing claimants in personal injury, workers' compensation, and social security disability cases.

2. At all times alleged in this complaint, Cohn & Cohn used one AOL email address and Respondent and Charles Cohn had equal access to this email account. The Cohn & Cohn email address was, cceclaw@aol.com.

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ARDC Clerk

3. As of June 21, 2022, the date the members of Panel C of the Inquiry Board authorized the Administrator to file this complaint before the Hearing Board, Lee S. Rose ("Mr. Rose") and Respondent had known each other for approximately 40 years. Mr. Rose is an engineer; he is not an attorney and has never been admitted to practice law in Illinois or elsewhere. Over the course of their relationship, Respondent has represented Mr. Rose on legal matters, hired Mr. Rose as an expert to provide his opinion on matters affecting Respondent's clients, and on occasion, represented the opposing party in cases where Mr. Rose provided services as an opinion witness.

4. Between May 12, 2008 and March 2, 2019, Respondent and Charles Cohn maintained a client trust account, ending in the four digits 3532, at Chase Bank USA, N.A. ("Chase Bank"). That account (hereinafter "client trust account") was entitled, "Cohn & Cohn Client Trust Account" and was used by Respondent and Charles Cohn as the depository of funds belonging to the firm's clients, to third parties or, presently or potentially, to the Cohn & Cohn law firm.

5. Between approximately May 12, 2008 and March 2, 2019, Respondent and Charles Cohn were both signatories on the client trust account and had the ability to deposit, transfer, or withdraw funds from the client trust account.

6. Prior to March 1, 2019, Mr. Rose approached Respondent to discuss Respondent acting as the escrow agent for a business endeavor that Mr. Rose was involved in. Mr. Rose told Respondent that the business endeavor required the use of an escrow account. Respondent agreed to act as the escrow agent for matters related to Mr. Rose's business endeavor.

7. On or about March 1, 2019, Respondent enrolled in Chase Bank's online portal for the client trust account, thereby providing him access to review activity on the account (such as account balances and transaction history), and the ability to make payments, transfer funds, wire funds, delegate access to multiple users, schedule alerts, and link multiple accounts. Respondent

began receiving automated business banking activity alerts via email to the Cohn & Cohn email account regarding the client trust account. A Chase Bank alert was sent to cceclaw@aol.com notifying its recipients regarding the enrollment in Chase's online portal.

8. On March 2, 2019, Respondent submitted paperwork to Chase Bank that had the effect of removing Charles Cohn as a signatory on the client trust account. Additionally, on March 2, 2019, Respondent submitted paperwork to Chase Bank adding Mr. Rose, a non-attorney, as a signatory to the client trust account. Charles Cohn was unaware, at the time, that he had been removed as a signatory from the client trust account at Respondent's direction or that Mr. Rose had been added.

9. On or about March 2, 2019, a Chase Bank alert was sent to cceclaw@aol.com notifying its recipients that Mr. Rose enrolled in Chase Bank's online portal for the client trust account, thereby providing Mr. Rose with the ability to review activity on the account (such as account balances and transaction history), make payments, transfer funds, wire funds, delegate access to multiple users, schedule alerts, and link multiple accounts. Additionally, a second Chase Bank alert was sent to cceclaw@aol.com notifying its recipients that a new debit/ATM/Pre-paid card had been ordered.

10. On or about March 8, 2019, a Chase Bank alert was sent to cceclaw@aol.com notifying its recipients that Mr. Rose had converted the client trust account to paperless statements and that the Cohn & Cohn law firm would no longer receive mailed paper statements, notices, or letters relating to activity in the client trust account.

COUNT I
(Failure to hold escrow, Conversion, and Failure to comply with reasonable requests– JerLib)

11. On or about March 15, 2018, Gerald C. Forstner ("Mr. Forstner") founded JerLib Investors, LLC ("JerLib"). JerLib was an investment firm located in Florida.

12. On March 11, 2019, JerLib entered into a good faith agreement ("GFA") with SynSel Energy, Inc. ("SynSel"), by which JerLib agreed to provide financial support to SynSel in connection with the construction of a biofuel refinery. As part of the GFA, JerLib agreed to deposit $3,000,000 in an escrow account maintained by Cohn & Cohn while SynSel secured $12,000,000 in corporate financing.

13. On March 13, 2019, JerLib and Respondent entered into an escrow agreement. Mr. Forstner signed the escrow agreement as the representative for JerLib and Respondent signed the escrow agreement as the representative for Cohn & Cohn. Regarding the funds, the escrow agreement stated, in part,

> **Escrow Funds**. Upon the execution of this Agreement, [JerLib] shall cause the deposit of the sum of Three Million Dollars ($3,000,000 USD) (the "Escrow Funds) [Sic] into [Cohn & Cohn's] designated non-interest-bearing Escrow account in a bank acceptable to [JerLib]. The Escrow Account cannot be moved or modified without the express prior written approval of [JerLib], and then only in accordance with [JerLib's] instructions.

14. The escrow agreement also outlined Cohn & Cohn's duties as escrow agent and stated, in part,

> **General Rights and Duties of Escrow Agent:** [Cohn & Cohn] agrees to ensure the security of the escrowed funds and [Cohn & Cohn] agrees to perform its duties hereunder with the same degree of care as that of a prudent fiduciary. [Cohn & Cohn] does not have an interest in the Escrow Funds and has possession thereof only as Escrow Agent in accordance with the terms of this Agreement. Any funds received into escrow shall be deposited in a separate designated trust account of [Cohn & Cohn] for the exclusive benefit of [JerLib], unless otherwise instructed in writing by the Parties.

15. The provisions of the escrow agreement entitled JerLib to have its $3,000,000 returned after certain conditions occurred. The escrow agreement stated,

> After 75 days from [March 13, 2019] herein, [JerLib] will have the absolute right to remove its funds from the Escrow Account at any time with written

> notice to [Cohn & Cohn]. [Cohn & Cohn] agrees to transfer the full balance of the Escrow Account funds paid into the escrow account to [JerLib] in readily available funds within five (5) business days, in accordance with instructions to be provided by [JerLib] in such written notice.

16. On March 18, 2019, pursuant to the escrow agreement, Jerlib transferred $3,000,000 to the client trust account. Prior to March 18, 2019 deposit into the client trust account, between January 1, 2014 and February 26, 2019 the client trust account maintained a balance of $50.

17. Between March 19, 2019 and June 27, 2019, Mr. Rose disbursed at least $2,878,163 of the escrow funds by wire transfer, transfer to other Chase accounts, or withdrawal, and as a result of those actions, on June 27, 2019, the Chase Bank client trust account's balance had fallen to $121,837. The $2,878,163 in disbursals represented a portion of the funds Respondent had agreed to hold in escrow in the Chase Bank client trust account on behalf of JerLib.

18. On March 20, 2019, March 21, 2019, March 22, 2019, March 26, 2019, April 9, 2019, April 26, 2019, May 3, 2019, May 20, 2019, May 29, 2019, and June 27, 2019, Respondent received Chase Bank account alerts regarding wire transfers initiated on the client trust account. These Chase Bank alerts were emailed to cceclaw@aol.com, the email address used by Respondent. During that time, Respondent took no action to limit Mr. Rose's access to the client trust account, or to ensure that Mr. Rose's conduct regarding the account was compatible with the Respondent's own professional obligations.

19. At no time before Mr. Rose transferred the $2,878,163, or any time after that point, had Respondent been "instructed in writing" by JerLib or anyone on JerLib's behalf, to disburse any of the escrowed funds, as required by the sections of the agreement described in paragraphs 13 and 14, above.

20. By allowing Mr. Rose unsupervised access to the client trust account and permitting him to disburse $2,878,163 of the escrow funds being held in Respondent's client trust account without JerLib's authorization, Respondent engaged in the conversion of those funds.

21. At the time Respondent engaged in conversion of the $2,878,163 in escrow funds, he knew that the escrow funds were being disbursed by Mr. Rose, without JerLib's authority, as he was receiving Chase Bank activity alerts to his email, and by allowing the disbursements to take place, Respondent acted dishonestly.

22. On July 12, 2019, in accordance with the escrow agreement, JerLib sent a letter to Respondent instructing him to return the $3,000,000 being held in the client trust account and provided Cohn & Cohn wire transfer instructions. Respondent received the letter but did not promptly deliver to JerLib the funds it was entitled to receive.

23. On August 5, 2019, JerLib's attorney, David Boggs from the Falls Law Firm, PLLC located in North Carolina wrote to Respondent requesting the release of the $3,000,000 purportedly being held in escrow by Cohn & Cohn. This letter was emailed to cceclaw@aol.com, the email address used by Respondent and received by Respondent at or about the time it was sent.

24. On August 29, 2019, another attorney acting on JerLib's behalf, Victor Pioli from the law firm of Johnson & Bell in Chicago, emailed a letter to Respondent and Mr. Rose demanding that Respondent immediately release the $3,000,000 purportedly being held in the client trust account. This letter was emailed to cceclaw@aol.com, the email address used by Respondent and received by Respondent at or about the time it was sent.

25. On September 17, 2019, JerLib filed a complaint in federal court in Chicago seeking injunctive relief against Respondent and requesting that none of the escrowed funds be paid out, withdrawn, or transferred from the client trust account. The lawsuit also sought recovery

of the $3,000,000 placed in escrow as well as damages against Cohn & Cohn, Respondent, and others. The federal court action was filed in the Northern District of Illinois- Eastern Division and docketed as, *JerLib Investors, LLC v. Cohn & Cohn, Erwin Cohn, Charles A. Cohn, Lee S. Rose, John Krcil, Black Lion Investment Partners, Inc., Brown Capital Funding, LLC, Christopher Brown, and Stephen Hay*, case number 1:19-cv-06203 ("*JerLib v. Cohn*")

26. As of September 17, 2019, the date JerLib filed the *JerLib v. Cohn* complaint, Respondent had not responded to the letters described in paragraphs 22, 23, and 24, above.

27. As of June 21, 2022, the date the members of Panel C of the Inquiry Board authorized the Administrator to file this complaint before the Hearing Board, Respondent had not returned any portion of the escrowed funds.

28. By reason of the conduct described above, Respondent engaged in the following misconduct:

a. failure to maintain and appropriately safeguard funds belonging to clients and/or a third party by conduct including allowing $2,878,163 in escrow funds to be distributed when he knew he had a duty as escrow agent to hold those funds in escrow for JerLib, in violation of Rule 1.15(a) of the Illinois Rules of Professional Conduct (2010);

b. failure to promptly deliver to the client or third person funds that the client or third person is entitled to receive and failure to provide an accounting of those funds, by conduct including failing to promptly distribute the $3,000,000 in escrow funds to JerLib and failing to provide JerLib an accounting of those funds, in violation of Rule 1.15(d) of the Illinois Rules of Professional Conduct (2010); and

c. conduct involving dishonesty, fraud, deceit, or misrepresentation, by conduct including knowingly allowing $2,878,163 in escrowed funds to be disbursed by Mr. Rose despite receiving Chase Bank account activity alerts notifying him of the disbursals, in violation of 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT II
(Misrepresentations to the Court in JerLib v. Cohn)

The Administrator realleges and incorporates paragraphs 1 through 25, above

29. On September 17, 2019, in addition to the filing of the complaint in *JerLib v. Cohn*, JerLib filed a motion for a temporary restraining order requesting that Respondent be enjoined from removing any funds being held in the client trust account. The motion for temporary restraining order was set for hearing on September 20, 2019. Prior to September 20, 2019, Respondent was aware that one of the issues before the court that would be addressed at the hearing was the whereabouts of the JerLib escrow funds, specifically including whether those funds remained in the client trust account. On September 20, 2019, the balance in the client trust account was $46,837, which Respondent could have determined by using the Chase Bank online portal, by telephoning the bank, or by visiting any of the Chase bank branch locations.

30. At the September 20, 2019 hearing, JerLib was represented by Joseph Marconi from the law firm of Johnson and Bell and Respondent appeared on behalf of himself and Cohn & Cohn. During the September 20, 2019, temporary restraining order hearing, the following exchange occurred before the Honorable Andrea R. Wood:

> THE COURT: Where is the money – it's in your client trust account?
>
> MR. COHN: Yes. It's in my – it's not an IOLTA account, I don't believe. It's in Chase Bank. If you want – they won't show specifically his client's money, but it will show the amount of money in the escrow account, which my understanding is somewhat in excess of 10 million, because 8.6 million just went into it the other day.
>
> Mr. MARCONI: Judge, that is even more frightful.
>
> THE COURT: 8.6 million went in from other people other than Mr. Forstner? I'm sorry, I'm mispronouncing everybody's name today.
>
> MR. MARCONI: Forstner.

THE COURT: Thank you.

MR. COHN: I don't know how many of these agreements are out, but whoever is part of this particular agreement, all their money goes into that escrow account.

MR. MARCONI: Judge, the fear is there is some kind of pay Peter – What's the saying?

THE COURT: Ponzi scheme, is what's it's called. It's called a Ponzi scheme. You're using a nice phrase.

31. Respondent's statement to Judge Wood that JerLib's money was in his client trust account as described in paragraph 30, above, was false, because on September 20, 2019, the client trust account had a balance of $46,837.

32. Respondent knew his statement to Judge Wood, that JerLib's money was in his client trust account, as described in paragraph 30, above, was false because as a result of Respondent's online access to the client trust account (as described in paragraph 7, above) Respondent knew that between March 19, 2019 and September 20, 2019, Mr. Rose disbursed funds being held in the client trust account resulting in the client trust account balance falling to $46,837. Additionally, Respondent received Chase Bank account activity alerts to his Cohn & Cohn email address (as described in paragraph, 18, above) informing Respondent that money was being disbursed from the account, putting him on notice that there was activity on the client trust account which would affect the balance of the client trust account.

33. Respondent's statement to Judge Wood that $8,600,000 was deposited days prior to the court hearing, as described in paragraph 30, above, was false, because between March 19, 2019 and September 20, 2019, there was never a deposit, or series of deposits, totaling $8,600,000 in the client trust account.

34. Respondent knew his statement to Judge Wood, that $8,600,000 was deposited days prior to the court hearing, as described in paragraph 30, above, was false, because as a result of Respondent's online access to the client trust account, (as described in paragraph 7, above) Respondent knew that between March 19, 2019 and September 20, 2019, there was never a deposit, or series of deposits, totaling $8,600,000 in the client trust account. Additionally, Respondent received Chase Bank account activity alerts to his Cohn & Cohn email address (as described in paragraph, 18, above) informing Respondent that money was being disbursed from the account, putting him on notice that there was activity on the client trust account which would affect the balance of the client trust account

35. By reason of the conduct described above, Respondent has engaged in the following misconduct:

a. knowingly making a false statement of fact or law to a tribunal by conduct including telling Judge Wood that JerLib's money was in his client trust account as described in paragraph 30, above, in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct (2010); and

b. conduct involving dishonesty, fraud, deceit or misrepresentation by telling Judge Wood that $8,600,000 was deposited in his client trust account days prior to the court hearing, as described in paragraph 30, above, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT III
(Misrepresentations to the Court in JerLib v. Cohn)

The Administrator realleges and incorporates paragraphs 1 through 25 and paragraphs 29 and 30, above.

36. There was no activity in the client trust account that affected the account's balance between September 20, 2019 and October 16, 2019, and Respondent had received no information during that time to show that the account's balance had increased from $46,837. On October 16,

2019, Respondent was back before Judge Wood regarding JerLib's motion for a temporary restraining order, as described in paragraph 29, above. On this day, JerLib was represented by Victor Pioli from the law firm of Johnson and Bell and Respondent appeared on behalf of himself and Cohn & Cohn. During the October 16, 2019, temporary restraining order hearing, the following exchange occurred before the Honorable Andrea R. Wood:

> THE COURT: Okay. So how does that address my question which is: What is your objection, if any, to my entering an order that prohibits any defendant from having any transaction involving this bank account until further order of the court?
>
> MR. COHN: I have no objection to that. As a matter of fact, we would like to turn the money all over to the court and let them administer it. Actually, there is a lot more money in this account than merely JerLib's money.
>
> THE COURT: The escrow agreement seems to require that it be kept in a segregated account. Are you saying that that was not --
>
> MR. COHN: I'm sorry, Judge?
>
> THE COURT: The escrow agreement requires the money to be kept in a segregated account. Are you saying that that wasn't done?
>
> MR. COHN: That's not done. There is, I would imagine at this moment maybe some $11.6 million in the account. We would be happy to turn every dime of it over to an escrow agreement with the federal court.

37. Respondent's statements to Judge Wood that JerLib's money was in the account, described in paragraph 36, above, was false, because on October 16, 2019, the client trust account had a balance of $46,837.

38. Respondent knew his statements to Judge Wood that JerLib's money was in the account, as described in paragraph 36, above, was false because as a result of Respondent's online access to the client trust account, (as described in paragraph 7, above) Respondent knew that between March 19, 2019 and October 16, 2019, Mr. Rose disbursed funds being held in the client trust account resulting in the client trust account balance falling to $46,837. Additionally,

Respondent received Chase Bank account activity alerts to his Cohn & Cohn email address (as described in paragraph, 18, above) informing Respondent that money was being disbursed from the account, putting him on notice that there was activity on the client trust account which would affect the balance of the client trust account.

39. Additionally, Respondent's statement to Judge Wood that $11,600,000 was in the client trust account, described in paragraph 36, above, was false, because between March 19, 2019 and October 16, 2019, there was never a deposit, or series of deposits, totaling $11,600,000 in the client trust account.

40. Respondent knew his statement to Judge Wood that $11,600,000 was in the client trust account, as described in paragraph 36, above, was false because as a result of Respondent's online access to the client trust account, (as described in paragraph 7, above) Respondent knew that between March 19, 2019 and October 16, 2019, there was never a deposit, or series of deposits, totaling $11,600,000 in the client trust account. Additionally, Respondent received Chase Bank account activity alerts to his Cohn & Cohn email address (as described in paragraph, 18, above) informing Respondent that money was being disbursed from the account, putting him on notice that there was activity on the client trust account which would affect the balance of the client trust account

41. By reason of the conduct described above, Respondent has engaged in the following misconduct:

a. knowingly making a false statement of fact or law to a tribunal by conduct including telling Judge Wood that JerLib's money was in the client trust account, as described in paragraph 36, above, in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct (2010); and

b. conduct involving dishonesty, fraud, deceit or misrepresentation by conduct including telling Judge Wood that $11,600,000 was in the client trust account, as described in paragraph 36, above, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

WHEREFORE, the Administrator requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held, and that the panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully submitted,

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Attorney Registration and
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