2022 PR 56

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

In the Matter of:	)	
	)	
ERWIN COHN,	)	Commission No. 2022 PR 56
	)	Brigid A. Duffield, Hearing Chair, Presiding
Attorney-Respondent,	)	
	)	
No. 478725	)	

ERWIN COHN'S ANSWER TO THE ADMINISTRATOR'S COMPLAINT

Pursuant to IARDC Commission Rule 231, Respondent Erwin Cohn ("Erwin") responds to the Commission's August 2, 2022 Complaint against him, No. 2022 PR 56, as follows:

Introductory paragraph

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.

Erwin Admits Administrator Larkin and Counsel Rusch have filed Complaint No. 2022 PR 56.

Erwin admits that he was first licensed to practice law in Illinois on November 29, 1950.

Erwin denies that he has engaged in conduct that subjects him to the discipline charged in the Complaint.

Stating further, Erwin Cohn is retired from the rolls of the ARDC as of January 1, 2022. As such he "shall no longer be eligible to practice law or hold himself or herself out as being authorized to practice law in this state" *Rule 756 - Registration and Fees*, Ill. Sup. Ct. R. 756. He is not a member of the Illinois Bar or an attorney licensed in Illinois. As such, the Illinois ARDC does not have *jurisdiction to discipline him* as he is

no longer a "member of the Illinois Bar" under Illinois Supreme Court Rule ("ISCR") 751(a), is not an "attorney licensed in Illinois" under ISCR 752(a), and is not an "attorney" under ISCR 770. (Nor does the ARDC accuse him of the unauthorized practice of law as a non-attorney under ISCR 752(a).) Without jurisdiction over him, the charges filed by the Administrator should be dismissed.

In addition, Mr. Cohn is just shy of 94-1/2 years old and has diagnosed with a Major Neurocognitive Disorder (also known as a Dementia), consisting primarily of abnormal learning and memory, and difficulties with processing speed. While the precise etiology of the disease appears to be unknown at this time, according to one of Mr. Cohn's neuropsychiatrists, it manifests in both "cortical and subcortical brain dysfunction," and Erwin Cohn "appears to be evidencing a mixed vascular dementia and Alzheimer's disease profile." In light of these facts and diagnoses, Mr. Cohn is not able to adequately contribute to his own defense of this disciplinary action and therefore is not capable of adequately defending himself. As such, this disciplinary case against Mr. Cohn should be dismissed.

It appears that Respondent is barred at this time from seeking dismissal on either of these two grounds, *see* Commission Rule 235, but the Hearing Chair is of course empowered to rule *sua sponte* at any time that the ARDC panel has no jurisdiction over the matter and/or Mr. Cohn cannot properly defend the matter consistent with due process.

Respondent also reserves the right to seek relief from a court authorized to rule on this Panel's jurisdiction both to hear the disciplinary complaint and to recommend disciplinary action in these circumstances.

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.

ADMIT.

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.

Erwin admits that the Cohn & Cohn email address was and is cceclaw@aol.com. (the "Cohn & Cohn email address").

Erwin admits that Cohn & Cohn used the Cohn & Cohn email address at all times alleged in the Complaint.

Erwin denies that he had equal access to the Cohn & Cohn email account because Erwin has never used email, including but not limited to the Cohn & Cohn email account. Erwin never received or sent any emails to or from this email address. Erwin never checked the incoming emails sent to that email address from any party, including but not limited to the Chase Bank email alerts identified below in paragraphs 7, 9, 10, 17, 18, 21, 28(c), 33, 34, 39, and 40 of the ARDC's Complaint.

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.

ADMIT, but stating further, Erwin submits that in obtaining authorization from Panel C of the Inquiry Board to file the Complaint at issue, the Administrator provided Panel C with certain incorrect information, as outlined in some detail in this Answer to the Administrator's Complaint.

Mr. Rose is an engineer; he is not an attorney and has never been admitted to practice law in Illinois or elsewhere.

ADMIT, but stating further, Erwin has never held Mr. Rose out as an attorney to any person and Erwin has never held Mr. Rose out as being an attorney with the law firm Cohn & Cohn to any person. As discussed in more detail below, a different person, Stephen Hay associated with the investment firm Brown Capital Funding International, LLC ("BCFI"), was the one who falsely told JerLib that Rose was an attorney with the Cohn & Cohn firm, but Erwin Cohn never made any such statement.

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.

Erwin ADMITS that he represented Rose on legal matters and hired Rose as an expert to provide his opinion on matters affecting Erwin's clients.

Erwin DENIES that Rose represented clients who were adverse to clients of Erwin in that Erwin is not aware of, and/or has no memory of, any situation in which Rose did so.

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.

DENIED.

Respectfully, the ARDC has gotten a crucial fact about this account incorrect. First, at no time in the eleven years this account was open did Cohn & Cohn ever use this account as a depository of funds for any client. The ARDC is simply wrong that this account, although entitled "client trust account" by Chase, was ever, in fact, "used by [Erwin] and Charles Cohn as a depository of funds belonging to the firm's client, third parties, or . . . to the Cohn & Cohn law firm." This was never an active account and was never used as a client trust account, as that term is used in Illinois Rule of Professional Conduct 1.15. This is a highly significant fact because it was the complete dormancy of the account that enabled Lee Rose to manipulate the account and manipulate Erwin into giving Lee Rose access to the account.

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.

ADMIT, but stating further, although they had "the ability" to deposit, transfer, or withdraw funds from the client trust account, neither ever, in fact, ever did so (with the exception of the $50 that was used on May 12, 2008 to open the account and that remained dormant in the account for the next approximately 11 years).

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.

ADMIT that Rose approached Erwin prior to March 1, 2019 about using what the ARDC has denominated as "the client trust account" for a business endeavor that Rose was involved in.

ADMIT that Rose told Erwin that the business endeavor required the use of an escrow account.

ADMIT that at a later time, not prior to March 1, 2019, Erwin agreed to act as the escrow agent for the matters related to Rose's business endeavor.

DENY that Rose told Erwin that the business endeavor required the use of a client trust account.

DENY that Rose approached Erwin prior to March 1, 2019, about Erwin acting as the escrow agent for a business endeavor that Rose was involved in.

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.

Erwin DENIES that he personally enrolled in Chase Bank's online portal on March 1, 2019, or at any other time. Each step necessary to enroll in Chase Bank's online portal was taken by Lee Rose, not by Erwin Cohn. As the Hearing Panel will learn, at no relevant time did Erwin Cohn have the technical or computer ability to do what he is alleged to have done in this paragraph. This activity was part of Lee Rose's fraudulent scheme, and Erwin did not knowingly participate in any of the account manipulation identified in this paragraph.

Erwin DENIES that he has access to review account balances, transaction history, or any other activity on the account because Erwin is not computer literate and does not know how to undertake any of the necessary steps to obtain such access. This is true of any online portal, including but not limited to that of Chase Bank.

Erwin DENIES that at any time he had the ability to make payments, transfer funds, wire funds, delegate access to multiple users, schedule alerts, or link multiple accounts because Erwin is not computer literate and does not know how to undertake any of the necessary steps to undertake any of the actions set forth. This is true of any online portal, including but not limited to that of Chase Bank.

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.

Erwin DENIES that he began receiving automated business banking alerts via email regarding the client trust account at any time, including from Chase Bank at the Cohn & Cohn email address, cceclaw@aol.com.

Stating further, at no time did Erwin Cohn ever use that email address for any purpose, nor does he know how to use it, nor did any person print off any email from Chase Bank at that email address and provide it to Erwin Cohn.

Erwin can neither admit nor deny that Chase Bank sent automated business banking activity alerts via email to the Cohn & Cohn email account regarding the client trust account, as he is wholly unaware whether they did or did not do so. He has no knowledge of the communications sent to that email address or the scope of any such emails. Stating further, Erwin has no history whatsoever of dealing by email with Chase for any Cohn & Cohn account.

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.

Erwin ADMITS that he submitted such paperwork, but states further that he was tricked and manipulated by Lee Rose on March 2, 2019, and that, although he "submitted" such paperwork, he was not aware at that time of the manner in which Rose intended to use the until-then dormant account that Chase Bank has denominated "client trust account," nor was Erwin aware of other manipulations Rose was able to effectuate at Chase Bank with respect to the Cohn & Cohn account that are not reflected in the "add signers" and "remove signers" forms Erwin signed.

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.

ADMIT.

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.

Erwin <u>can neither admit nor deny</u> whether such Chase Bank alerts were or were not sent to that email address on that date or what any such alert, if any stated, as he is wholly unaware whether Chase Bank did or did not do so. He has no knowledge of the communications sent to that email address or the scope of any such emails. Stating further, Erwin has no history whatsoever of dealing by email with Chase for any Cohn & Cohn account at any time. Stating further, Erwin DENIES that he was a recipient of either email.

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.

Erwin <u>can neither admit nor deny</u> whether such Chase Bank alerts were or were not sent to that email address on that date or what any such alert, if any stated, as he is wholly unaware whether Chase Bank did or did not do so. He has no knowledge of the communications sent to that email address or the scope of any such emails. Stating further, Erwin has no history whatsoever of dealing by email with Chase for any Cohn & Cohn account at any time. Stating further, Erwin DENIES that he was a recipient of either email.

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.

ADMIT.

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.

Erwin ADMITS that JerLib and Synsel entered into a so-called Good Faith Agreement on March 11, 2019, but denies that Synsel or Jerlib entered that agreement (or any of the other six agreements Synsel and JerLib) in good faith.

Erwin ADMITS that the Good Faith Agreement stated that JerLib agreed to provide "financial support to Synsel" in connection with a purported "biofuel refinery," but states further that both the "biofuel refinery" and the purported "financial support" were completely illusory. Erwin, through counsel, challenges the concept that JerLib placing money into its own account in fact provided "financial support" to Synsel, and Erwin intends to hold the Administrator to his proof in that regard.

Erwin ADMITS that the GFA states that JerLib agreed to deposit $3,000,000 in an escrow account maintained by Cohn & Cohn while SynSel purportedly secured $12,000,000 in corporate financing.

Stating further, there were in fact a total of seven, so-called Good Faith Agreements JerLib entered with Synsel. The one to which the ARDC refers in its Complaint was actually the seventh of the agreements entered between them.

It is highly significant that Synsel breached each of the first six agreements, as follows, because this created a significant red flag to JerLib that it intentionally ignored. Further, each of the "good faith agreements" may be in the nature of a fraud perpetrated by Jerlib and its advisors (including complainant Yaecker) in that the benefit that JerLib was purportedly providing to Synsel was wholly illusory, and the benefit that Synsel was purportedly providing to Jerlib, the so-called "Return" on JerLib's money, was also wholly illusory, as Synsel has never paid it or any other benefit to JerLib, nor has JerLib ever sought the at least $1.55 million it is owed by Synsel.

Jerlib entered the first agreement with Synsel on May 25, 2018, a copy of which is attached as Exhibit 1. Under that Agreement, Jerlib placed and held $3 million *in its own Chase Bank account in Berea, Ohio*.

Purportedly, in exchange for placing the $3 million in its own account, Synsel agreed to pay Jerlib a $1 million Transaction Fee; an additional, contingent $240,000 if Synsel was able to raise additional financing based on the fact that JerLib had placed $3

million in its own account; and any legal fees incurred by JerLib. Synsel's payments were due to JerLib under the following schedule:

May 25, 2018	**$60,000 (1/4 of contingency + legal fee)**
August 23, 2018	**$1,000,000 Transaction Fee**
November 21, 2018	**$60,000 (1/4 of contingency + legal fee)**
February 20, 2019	**$60,000 (1/4 of contingency + legal fee)**
May 27, 2019	**$60,000 (1/4 of contingency + legal fee)**
	$1,000,000 Transaction Fee
	$ 240,000 Contingent Fee
	$Unspecified Legal Fees incurred

Synsel referred to these purported future payments to Jerlib as the "Return" on JerLib's "investment."

The protection for JerLib's investment lay in the fact that it held the money in its own account. The sole statement that Synsel made to JerLib in the first agreement on which JerLib could rely regarding the Return was: "Synsel represents and warrants that it has currently and will maintain the capacity to pay the Return to Jerlib when and as due, being payments set forth herein." Exhibit 1, at ¶ 4(b)(V).

On August 23, 2018, Synsel missed the $1,000,000 payment it owed to Jerlib, notwithstanding its contractual representation and warranty that it had and would maintain the capacity to pay the Return to JerLib when and as due. Synsel suggested to JerLib that the Agreement be amended, and Jerlib agreed.

On August 26, 2018, Jerlib and Synsel entered into an Amended Agreement, attached as Exhibit 2, in which Synsel promised that it would pay Jerlib not only the $1,000,000 it already owed, but that it would also pay an additional $100,000, for a total of $1.1 million by September 7. When Synsel did not make the $1,100,000 payment it owed to Jerlib on September 7, however, Synsel suggested once again that the Agreement be amended. JerLib agreed.

On September 10, 2018, Jerlib and Synsel entered into an Amended Agreement, attached as Exhibit 3. In that amended Agreement, Synsel promised that it would pay Jerlib not only the $1,100,000 it already owed JerLib, but that it would also pay an additional $100,000, for a total of $1.2 million by September 21. When Synsel did not make the $1,200,000 payment it owed to Jerlib on September 21, however, Synsel suggested that the Agreement be amended yet again.

On September 21, 2018, Jerlib and Synsel entered into their fourth agreement together, the Amended Agreement attached as Exhibit 4, with Synsel now promising to pay JerLib $1.25 million by September 28. When Synsel did not make the $1.25 million payment it owed to Jerlib on September 28, however, Synsel suggested that the Agreement again be amended. Shockingly, Jerlib agreed.

On October 1, 2018, Jerlib and Synsel entered into the Amended Agreement attached as Exhibit 5, in which Synsel promised that it would pay Jerlib $1,250,000 by Tuesday, October 2, at noon. Crazily, Jerlib agreed that if Synsel did not pay the $1,250,000 it

owed on October 2, JerLib would still be willing to extend Synsel an additional 26 days, until October 28, 2018, to pay Jerlib an additional $200,000, bringing the total Synsel would owe Jerlib on October 28 to $1.45 million. This Panel will not be surprised what happened next. Synsel did not pay Jerlib the $1.25 million it owed by October 2, 2018, and Synsel did not pay JerLib the $1.45 million it owed by October 28, 2018.

Nevertheless, on October 29, 2018, Jerlib and Synsel entered into the Amended Agreement attached as Exhibit 6, with Synsel upping its promised payment to $1.55 million by November 12, 2018, which it did not pay.

At this point, one would have expected Jerlib to become highly suspicious and extremely wary not only of Synsel's repeated broken promises, including his repeated promise that "Synsel represents and warrants that it has currently and will maintain the capacity to pay the Return to Jerlib when and as due," but also of Brown Capital Funding International, LLC ("BCFI"), and the two individuals that worked for BCFI, both its principal, federal Defendant Christopher Brown, and an additional employee or contractor Stephen Hay. BCFI was the company that purported to have "brokered" this non-sensical Synsel-Jerlib transaction.

At a minimum, one would expect JerLib to use extra caution when dealing with Synsel, BCFI, Brown, and Hay. Instead, Jerlib did just the opposite.

At this point, Brown told Jerlib's representatives – Gerald Forstner, JerLib's owner ("Forstner") a very successful and wealthy businessman and retired lawyer formerly licensed in Ohio; Scott Yaecker, an experienced CPA and successful businessman ("Yaecker"), and David Boggs, a highly-experienced North Carolina lawyer representing JerLib in these transactions ("Boggs") -- that he wanted JerLib to transfer the $3 million that it was holding *in its own account* into an escrow account that was controlled by a small, Chicago, personal injury firm, Cohn & Cohn.

Boggs, who did not do business where Forstner and Yaecker lived or did business in Ohio and Florida, had no business relationship with either businessman before the advent of the JerLib/SynSel dealings in late 2017 or early 2018, which dealings did not involve the Respondent or his firm until approximately March 2019.

Brown falsely told JerLib that he repeatedly used Cohn& Cohn as his escrow agent (an easily provable lie with a single phone call because Brown and the Cohns had never met, never spoken, and never done business together). Although this lie was easily provable, no JerLib representative – not Forstner, Yaecker, or Boggs – ever called Cohn & Cohn to confirm that it had served as an escrow agent for Brown or his company over the past 10 years.

In addition, unbeknownst to the three JerLib representatives, but known extremely well to the schemers, the escrow account that Brown intended to use was a Cohn & Cohn Chase Bank account that had laid dormant for almost 11 years (holding only the original balance of $50), an account over which Brown's co-schemer, Lee Rose, had recently taken control by preying on his 40-year friendship with, and tricking, a 90-year old Chicago attorney, Respondent Erwin Cohn.

For their part, Yaecker and Boggs had serious concerns regarding the use of an unknown, small, personal injury law firm to serve as escrow agent, and they had every reason to be concerned because Brown and Hay told them numerous lies about Brown's purported relationship with Cohn & Cohn and their co-schemer Lee Rose's relationship with Cohn & Cohn.

Nevertheless, Jerlib failed to do any research or due diligence into C&C, Erwin Cohn, or Charles Cohn aside from determining that the firm was in good standing with the ARDC (a single internet search) and that the firm had malpractice insurance (same single search). Most importantly, *none of the three ever spoke to anyone at C&C prior to depositing $3 million into the Chase Escrow Account, which by then* was controlled by Lee Rose as part of the fraudulent scheme.

When BCFI's Stephen Hay prepared the Escrow Agreement with JerLib's Scott Yaecker, he listed Lee Rose as both *an attorney* and *a C&C partner*, even though Rose was neither. This was the biggest red flag of all – because JerLib learned it was wrong before it signed the deal. If BCFI had truly been working with Cohn & Cohn for ten years, how could BCFI and its employees have mistakenly thought that Rose was an attorney or that he worked directly for C&C.

Instead of squelching the deal right then and there, JerLib went forward with the Escrow Agreement once Lee Rose's name was removed from the Escrow Agreement, but JerLib completely failed even to ask if Lee Rose's name was still associated with the Escrow Account. Indeed, as stated above, JerLib made no inquires of C&C at all.

On March 13, 2019, having never spoken directly to Erwin Cohn, Charles Cohn, or any other Cohn & Cohn representative, Jerlib -- at the urging of Brown, Hay, and Brown Capital – signed the Escrow Agreement. Brown – who was purportedly working with Forstner, Yaecker and Boggs as a consultant, but who was actually executing a scam to steal their money – also signed the Agreement.

On March 18, 2019, having never spoken directly to Erwin Cohn, Charles Cohn, or any other Cohn & Cohn representative, Jerlib -- at the urging of Brown, Hay, Brown Capital, and Synsel – deposited $3,000,000.00 into the Chase Escrow Account, which was now controlled by Rose.

As the schemers had always planned, Rose immediately began distributing JerLib's $3 million out of the Chase Escrow Account to various entities and persons, including several other members of the criminal enterprise, most of whom are also defendants in either the Federal Litigation or in other litigation JerLib has brought against parties that have actually benefited from the criminal scheme.

All of money stolen from the Chase Bank – both that of JerLib and that of other so-called "investors" – was stolen by Lee Rose. Not a single transfer was made out of that account by Respondent Erwin Cohn. Indeed, Erwin did not know about the deposits (at the time Rose or his victims made the deposits), nor did he know about the withdrawals (at the time Rose made the withdrawals).

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.

Erwin ADMITS that he signed the Escrow Agreement on behalf of ("as the representative for" Cohn & Cohn), although stating further, Erwin concedes that he did not have the legal authority to enter such an agreement on behalf of Cohn & Cohn both because of the Illinois Partnership Act, CITE, and a written partnership agreement with his son Charles Cohn. Stating further, neither Erwin Cohn, nor Charles Cohn, nor any other agent of C & C had any role whatsoever in the drafting or the editing of any part of the "Escrow Agreement." On information and belief, the Escrow Agreement was based on a form that Brown found on the internet and that was then edited by three of the co-schemers -- Brown, Hay, Rose – as well as SynSel agent Brian Buckta, and possibly also reviewed and edited by JerLib representatives Yaecker and/or Boggs. On information and belief, the first time that Erwin Cohn ever saw the Escrow Agreement was when Lee Rose stuck it in front of him and told him to sign it in furtherance of the business venture with which Erwin believed he was helping Rose and which Erwin believed was legitimate.

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.

ADMITS.

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.

ADMIT. Stating further, the Panel should review, and will have the opportunity to review, the Escrow Agreement in its entirety, as well as earlier drafts of the agreement prepared by the criminal enterprise and referenced above.

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.

ADMIT. Stating further, Cohn & Cohn were unable to meet its obligations under this contractual paragraph because the following amounts of money were stolen from the Chase Account by the following people without Erwin's knowledge and without any assistance on Erwin's part, knowing or otherwise:

Lee Rose and Edward Wooten	$1,555,000.00
Lee Rose and Sinowide Energy LLC	$1,125,000.00
Lee Rose	$370,000.00
Lee Rose and Black Lion Investment Partners, Inc.	$250,000.00
Lee Rose and Game Time Sports LLC	$200,000.00
Lee Rose and Westlea Holding, LLC	$200,000.00
Lee Rose and Terri Davis	$55,000.00
Lee Rose and Elite Jax Investors LLC	$55,000.00
Lee Rose and Sullivans Jewelers Inc.	$50,000.00
Lee Rose and Pearl Forbes	$40,000.00
Lee Rose and Blair W. [LNU]	$10,000.00
Lee Rose and Connor Associates	$5,000.00
	$3,915,000.00

16. On March 18, 2019, pursuant to the escrow agreement, Jerlib transferred $3,000,000 to the client trust account.

ADMIT. Answering further, JerLib transferred $3 million into the Escrow Account at the express request and direction of co-schemers Brown, Hay, and Rose, by Synsel's Tawoda and Buckta, and by its own advisors, Yaecker and Boggs, <u>but not by Erwin Cohn or any partner or agent of C & C</u>.

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.

Erwin ADMITS that the account that Chase calls the client trust account, but which is called the Escrow Account with respect to this case – maintained a balance of $50 between January 1, 2014, and February 26, 2019, but stating further, this statement by the administrator omits that the account also maintained a balance of $50 for a period well before January 1, 2014, since the day it was opened on May 12, 2008.

In other words, prior to Lee Rose manipulating the account, *the account had never been used for any purpose*, which of course renders false the ARDC's allegation in paragraph 4 above that Erwin used the client trust account as the depository of funds belonging to the firm's clients, third parties, and the Cohn & Cohn law firm. He never did so.

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.

ADMIT.

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.

ADMIT.

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.

DENIED.

These Chase Bank alerts were emailed to cceclaw@aol.com,

ADMIT, but see response above in paragraph 2 (and the responses cited within paragraph 2), in which Erwin explains in detail that he never used this email address and was wholly unaware of anything sent from Chase Bank to that email account.

the email address used by Respondent.

DENIED.

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.

Erwin admits that he took no action but stating further, when he left the bank with Lee Rose on March 2, 2019, Erwin was completely unaware of the numerous steps that Lee Rose had taken with respect to Cohn & Cohn account, including the degree to which Rose had given himself access.

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.

ADMIT that at no time did JerLib instruct Erwin in writing to disburse funds, but stating further, *Erwin Cohn never disbursed any funds out of the account*. The money in the account was stolen by Lee Rose; Erwin did not authorize Rose to do so; and Erwin was not aware that Rose was doing so while Rose was doing so.

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.

DENY. At no time did Erwin Cohn understand that Lee Rose had unsupervised access to the Cohn & Cohn client trust account, that is, the escrow account, or that funds were being removed by Rose who repeatedly made misrepresentations to Erwin about the funds in the account. Erwin was tricked by Lee Rose and was wholly unaware of the alterations that Lee Rose had made to the account in order to manipulate it and steal from it.

Erwin Cohn further DENIES that he "permitted" Lee Rose to disburse amounts belonging to JerLib or to any other party from the escrow account. As stated above, Lee Rose obtained that ability though fraud and chicanery. Erwin Cohn denies that he converted any of JerLib's funds; denies that he knowingly converted any of JerLib's funds, and denies that he converted the funds of any other client or any third-party.

Moreover, the Administrator seems to have invented a new definition of "conversion." The term "conversion" is a legal term of art that has a specific meaning: the taking of property of another for one's own benefit. Here, Erwin neither took the property of another, nor did he receive any benefit. He neither knowingly took JerLib's funds, nor did he benefit in any way from the conversion of those funds in which others engaged. The Administrator is not free to simply re-define "conversion" to now mean "allowing" or "permitting" another person access to an account from which *that person* committed conversion.

Stating further, Erwin addresses separately below the $20,000 he received in a check from Lee Rose, which he did not know came from JerLib funds or from the escrow account.

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.

DENIED in its entirety. Erwin denies he engaged in conversion. Erwin denies that he knew that Rose was disbursing escrow funds, at all, with or without JerLib's authority. Erwin denies he was receiving Chase Bank activity alerts. Erwin denies that he "allowed" Rose's criminal disbursements to take place. Erwin denies that he acted dishonestly in any way.

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.

ADMIT that such a letter was sent and that the letter provided wire transfer instructions, but deny that at that time $3 million was being held in the client trust account, as the Administrator is fully aware. By that time, Lee Rose had already criminally removed all or virtually all of JerLib's $3 million from the Chase Escrow Account.

Respondent received the letter but did not promptly deliver to JerLib the funds it was entitled to receive.

ADMIT that he received the letter and that he did not promptly deliver funds to JerLib.

If by "entitled to receive," the ARDC is suggesting that after Lee Rose stole JerLib's money out of the client funds account, JerLib was still legally entitled to receive $3 million from Erwin Cohn, DENIED. Stating further, that issue – whether Cohn owes money to JerLib after Rose and others stole it – is the central issue in the Federal Litigation.

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.

ADMIT.

This letter was emailed to cceclaw@aol.com,

Erwin <u>cannot admit or deny</u> whether the letter was sent by email or U.S. mail. He is not denying it was sent; he simply does not know the manner in which it was sent.

the email address used by Respondent and received by Respondent at or about the time it was sent.

DENY in its entirety for the reasons stated above.

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.

ADMIT.

This letter was emailed to cceclaw@aol.com,

Erwin <u>cannot admit or deny</u> whether the letter was sent by email or U.S. mail. He is not denying it was sent; he simply does not know the manner in which it was sent.

the email address used by Respondent and received by Respondent at or about the time it was sent.

DENIED in its entirety for the reasons stated above.

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.

ADMIT.

The lawsuit also sought recovery of the $3,000,000 placed in escrow as well as damages against Cohn & Cohn, Respondent, and others.

ADMIT.

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*").

ADMIT that a federal court action was filed in the Northern District of Illinois, Eastern Division.

DENY that that federal action is captioned "*JerLib v. Cohn*."

DENY that that federal action was docketed with the caption that the Administrator sets forth above.

Stating further, the Administrator incorrectly states that Defendants Lee Rose, John Krcil, Black Lion Investment Partners, Brown Capital Funding, Christopher Brown, and Stephen Hay were named in 19-6203 at the time that the case was docketed. They were not.

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.

ADMIT.

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.

ERWIN disputes the phrase "Respondent had not returned any portion of the escrowed funds" to the extent that he has a legal obligation to return funds to which he does not have access. As this Panel is now aware, Rose removed the JerLib funds from the Escrow Account almost as quickly as those funds were deposited.

Therefore, if by "returned," the Administrator means to suggest that Erwin possessed JerLib's $3 million and never "returned" it, DENIED as a matter of fact.

If by "returned," the Administrator means to suggest that he has some legal duty, after the money was stolen from the Escrow Account, to use his own money to cover JerLib's losses caused by the criminal acts of others, DENIED.

Stating further, and as noted above, the issue of whether Erwin had a duty to "replace" the money that Rose stole is an issue to be decided in the Federal Litigation, not before this Tribunal.

Finally, the phrase "Respondent had not returned any portion of the escrowed funds" is misleading in one other way. At or near the time Rose agreed to serve as Escrow Agent, Lee Rose had paid Erwin $20,000 in a Cashier's Check. Rose disguised the source of the funds by withdrawing $20,000 in cash from the account and then having that $20,000 issued to Erwin Cohn in a Cashier's Check. (Every other Rose transfer was either an outgoing wire transfer or internal bank transfer.) Therefore, Erwin did not know the $20,000 Rose gave him had come from the Chase Escrow Account or derived from JerLib Funds. He only learned that fact much later, during the Federal Litigation.

Significantly in this regard, the Administrator omits that Erwin offered to pay this $20,000 into the ARDC's Client Protection Fund, but the Administrator declined that offer, stating that it wanted Erwin's disgorgement of the $20,000 paid to him *resolved in the Federal Litigation*.

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).

Erwin Cohn DENIES that he knowingly or intentionally violated IRPC 1.15(a) or (d).

Erwin Cohn DENIES that he violated IRPC 8.4(c) and that he knowingly and intentionally violated IRPC 8.4(c).

Erwin Cohn DENIES that he knowingly "allowed" Lee Rose to criminally and illegally steal money from the escrow account.

Erwin Cohn DENIES that he received Chase Bank account activity alerts notifying him of the disbursals.

Erwin Cohn DENIES that he engaged in any conduct involving dishonesty, fraud, deceit, or knowing misrepresentation.

Erwin DENIES that he breached any duty to JerLib or any Illinois Rule of Professional Conduct when he did not provide $2,978,163 or $3 million to JerLib after Lee Rose stole that money from the Chase Bank Account without Erwin's knowledge.

Erwin ADMITS that he did not "promptly" see IRPC 1.15(d) of JerLib's funds to JerLib, but DENIES that the delay in doing so violated IRPC 1.15(d).

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

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

Erwin realleges and incorporates his answers to paragraphs 1-25.

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.

ADMIT.

The motion for temporary restraining order was set for hearing on September 20, 2019.

ADMIT.

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.

ADMIT.

On September 20, 2019, the balance in the client trust account was $46,837,

ADMIT.

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.

ADMIT as to telephoning the bank or visiting a branch location.
DENY as to using the online portal for the reasons repeatedly stated above.

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.

ADMIT.

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.

Erwin ADMITS that the paragraph accurately cites the Court Hearing transcript and that he incorrectly told the Court (1) that JerLib's money was in Chase Bank; (2) that there was in excess of $10 million in the Chase Bank account; and (3) that $8.6 million "just went into it the other day."

Erwin DENIES that these were intentionally false statements to the Court, and Erwin further states that he was not aware that they were incorrect statements when he made them. Rather, they were false statements that fraudster Lee Rose had intentionally made to Erwin and on which Erwin negligently relied.

As stated, when Erwin made each of these statements to the Court, he believed them to be true, even if he was negligent in his investigation of the true facts. The evidence will show that at no time did he intentionally lie to the Court.

Stating further, Rose had been Erwin's friend for 40 years and had testified truthfully in the past as an expert witness. At the time Erwin spoke to the Court, he did so based on representations Rose made to him, and he had no basis at that time to believe that what he was telling the Court was untrue.

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.

ADMITS, but stating further, if by false the ARDC means intentionally false, DENIED. Stating further, Erwin's sole knowledge of what was in the account came from the false statements of Rose. He did not know there was only $46,837 in the account when he made the statement to Judge Wood that there was more. He did not learn the actual amounts in the account until he saw the November 2019 affidavit of JerLib's counsel Victor Pioli and the Chase bank records that Pioli attached to that affidavit.

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).

DENIED. Erwin did not have online access to the client trust account, and ERWIN did not know at the time he made his statement to Judge Wood that the statement was false. He believed it to be true. (Also, with regard to any password that might have existed to access the Chase Bank information, that password was by that time in the exclusive control of Rose.)

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.

DENIED.

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.

DENIED. Erwin Cohn did not receive any Chase Bank activity alerts. He never accessed the email account to which the Administrator claims such alerts were sent, and none of the email alerts were ever provided to him. (As previously stated above, neither Erwin, Charles or Cohn & Cohn had a history of dealing with Chase by email on any of its accounts. This Panel should recall that it was Lee Rose who, on March 2, 2019, converted what had always been U.S. mail notifications from Chase to Cohn & Cohn to email notifications. Therefore, the Administrator's repeated assumption that Chase sending an email alert automatically equates to notification to Erwin is a false assumption, both factually and legally.

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.

ADMITS, but stating further, if by false the ARDC means intentionally false, DENIED.

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.

DENIED. Here, the Administrator's false assumption comes to full fruition. The sole basis for the Administrator's belief that Erwin "knew" his statement to Judge Wood was false is because of Erwin's "online access." This Panel, however, is now fully aware that due to Erwin's age and complete lack of computer ability, Erwin did not have "on-line access" to the Chase account. This Panel is also now equally aware that it was not until fraudster Lee Rose converted Chase notifications from U.S. mail to email – completely without Erwin's knowledge – that email notifications began, wholly unbeknownst to Erwin. So, in addition to not in fact accessing the alerts, and in addition to not knowing how to access alerts, Erwin did not even know that such alerts had even begun.

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.

DENIED, for all of the reasons stated above.

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).

Erwin Cohn denies that he violated IRPC 3.3(a)(1) or 8.4(c).

Erwin denies that he knowingly or intentionally made a false statement to Judge Wood at any time, including the two statements identified in subparagraphs (a) and (b) above.

Stating further, the negligent statements Erwin made to the Court that are identified above did not cause harm to JerLib, because Rose had long ago removed JerLib's funds from the account. To the extent Erwin's negligent statements affected the Federal Litigation that JerLib has brought against him, the Court is perfectly capable of addressing any appropriate sanction for such statements as part of the Federal Litigation.

COUNT III

(Misrepresentations to the Court in JerLib v. Cohn)

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

Erwin realleges and incorporates his answers to paragraphs 1-25.

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.

ADMIT that there was no activity in the account identified on the dates identified. ADMIT that Respondent received no information during that time to show that the account's balance had risen over $46,837. Stating further, however, with the exception of the false statements that Lee Rose had made to him, Erwin had no information of any kind regarding the account balance during this time for reasons stated above.

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.

ADMIT.

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.

ADMIT.

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.

Erwin ADMITS that the paragraph accurately cites the Court Hearing transcript and ADMITS that his statements that (a) there was $11.6 million in the account; and (b) the inference that JerLib's money remained in the account, were both incorrect.

Erwin, however, DENIES that at the time he made these incorrect statements to the Court he knew that they were false. At no time did Erwin Cohn make an intentionally false statement to the Court, including the statements quoted here.

Stating further, fraudster Lee Rose intentionally made these false statements to Erwin, and Erwin negligently relied on this statement. Erwin relied on the false statements Rose made to him. Therefore, when Erwin made this statement to the Court, he believed it to be true, even if he was negligent in his investigation of the true facts. The evidence will show that at no time did he intentionally lie to the 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.

ADMITS, but stating further, if by false the ARDC means knowingly and intentionally false, DENIED.

38. Respondent knew his statements to Judge Wood that JerLib's money was in the account, as described in paragraph 36, above, was false.

DENIED.

Because as a result of Respondent's online access to the client trust account, (as described in paragraph 7, above)

DENIED.

Respondent knew that between March 19, 2019 and October 16, 2019, Mr. Rose disbursed funds being held in the client trust account

DENIED.

resulting in the client trust account balance falling to $46,837.

DENIED.

Additionally, Respondent received Chase Bank account activity alerts to his Cohn & Cohn email address (as described in paragraph, 18, above)

DENIED.

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.

DENIED.

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.

ADMITS, but stating further, if by false the ARDC means knowingly and intentionally false, DENIED.

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

DENIED.

because as a result of Respondent's online access to the client trust account, (as described in paragraph 7, above)

DENIED.

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.

DENIED.

Additionally, Respondent received Chase Bank account activity alerts to his Cohn & Cohn email address (as described in paragraph, 18, above)

DENIED.

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.

DENIED.

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).

Erwin Cohn denies that he violated IRPC 3.3(a)(1) or 8.4(c).

Erwin denies that he knowingly or intentionally made a false statement to Judge Wood at any time, including the two statements identified in subparagraphs (a) and (b) above.

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.

Erwin Cohn objects to a panel of the Hearing Board holding a hearing or making conclusions of fact and law and a recommendation for discipline on the grounds that (1) the Panel does not have jurisdiction to do so under Illinois Supreme Court Rules, and (2) the Inquiry Panel that made the referral relied on incorrect information provided by the Administrator to the Inquiry Panel.

Erwin DENIES that any discipline is warranted.

SUPPLEMENT TO RESPONSE

Commission Rule 231 requires the following additional statements in this Response.

Erwin has never been admitted to practice law before any other state court or before the bar of any foreign country. Erwin has never used a different name other than Erwin Cohn to register as an attorney.

a. Erwin has been admitted to practice law:
in the Northern District of Illinois since March 1, 1951;
in the Central District of Illinois since October 13, 2005; and
in the Seventh Circuit Court of Appeals since October 13, 1995.
These admissions were all under the name Erwin Cohn.

b. To the best of his memory, knowledge and belief, Erwin has never received any other professional license or certificate.

AFFIRMATIVE DEFENSES

1. Panel's Lack of Jurisdiction. This Panel does not have jurisdiction to discipline (or recommend discipline) against Respondent Erwin Cohn under Illinois Supreme Court Rules 751, 752, 756, and 770 because Erwin Cohn is no longer a member of the Illinois Bar or an attorney licensed in Illinois, and therefore does not qualify as an "attorney" within the meaning of those rules.

2. The Relationship Between this Disciplinary Action and the Federal Litigation Requires A Stay. If the proceeding before this Tribunal is not dismissed for lack of jurisdiction, it should be stayed pending resolution of the Federal Litigation. The Federal Litigation is brought by the same entity that brough the first ARDC Complainant, JerLib Investors LLC, through its accountant and advisor Scott Yaecker. The Federal Litigation is being prosecuted by the same lawyer who brough the second ARDC Complaint, Victor Pioli of the law firm Johnson & Bell. Respondent Erwin Cohn already identified to the ARDC his numerous concerns – as well as concerns expressed by the Federal Judge Andrea R. Wood that the proceedings brought against Erwin Cohn were brought about in violation of Illinois Rule of Professional Conduct 8.4(g).

3. The Potential Effect of the Disciplinary Action on the Federal Litigation Requires A Stay. Regardless of whether the Yaecker or Pioli Complaints were brought in violation of Illinois Rule of Professional Conduct 8.4(g), the continuation of the ARDC Complaints against Respondent will have the effect of violating 8.4(g) and/or significantly harming the policy sought to be protected by Rule 8.4(g) in that it is being used in an attempt to gain an advantage in the Federal Litigation.

4. Because of Respondent Cohn's Age and Mental Condition, He is not Capable of Assisting in His Own Defense and Therefore is not Capable of Adequately Defending Himself. Mr. Cohn is 94 years old and just shy of 94-1/2 years old. He has been diagnosed with a *Major Neurocognitive Disorder (also known as* a *Dementia), consisting primarily of abnormal learning and memory, and difficulties with processing speed.* The precise etiology of the disease is unknown, but manifests in both "cortical and subcortical brain dysfunction," and he "appears to be evidencing a mixed vascular dementia and Alzheimer's disease profile." In light of these facts and diagnoses, Mr. Cohn is not able to adequately contribute to his own defense of this disciplinary action and therefore is not capable of adequately defending himself.

Dated: September 9, 2022

Respectfully submitted,

Respondent Erwin Cohn

/s/ *Stuart J. Chanen*

Stuart Chanen
Chanen & Olstein
7373 Lincoln Ave.
Lincolnwood, IL 60712
847-644-3003
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CERTIFICATE OF SERVICE

Pursuant to Illinois Supreme Court Rules 9, 10, 11, and 12, Commission Rule 213, and the ARDC Electronic Procedure and User Manual, Respondent has both filed this Response in the State's Docket Management System and served this Response on the Clerk of the ARDC and the Counsel representing the ARDC at the following email addresses:

Email: mrusch@iardc.org

Email: ARDCeService@iardc.org

/s/ Stuart J. Chanen

Stuart J. Chanen