SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-062
District Docket No. XIV-2010-0232E

IN THE MATTER OF	:
ANTHONY J. LA RUSSO	:
AN ATTORNEY AT LAW	:

Decision

Argued: May 17, 2012

Decided: July 18, 2012

Melissa Ann Czartoryski appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us on a disciplinary stipulation between the Office of Attorney Ethics (OAE) and respondent. Respondent stipulated to having violated RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), and RPC 1.7(a)(2) (conflict of interest).

The OAE recommended a censure. For the reasons expressed below, we determine that a three-month suspension is warranted.

Respondent was admitted to the New Jersey bar in 1969. He maintains a law practice in Caldwell, New Jersey.

In 2007, respondent was censured for engaging in conflicts of interest in approximately forty-five matters, spanning from 2000 to 2004. In re La Russo, 190 N.J. 335 (2007). He represented several funeral homes that referred their clients to him. The clients were the beneficiaries of deceased State employees who had been enrolled in the State-administered retirement system. If the beneficiaries were unable to satisfy the funeral homes' expenses, the funeral homes would contact respondent while funeral arrangements were being made. At that time, respondent would fax to the funeral home his retainer agreement and a form letter to be sent to the State regarding his representation of the beneficiaries. The funeral homes would secure the beneficiaries signatures on the necessary documents and respondent processed the death claims with the State on their behalf. When respondent received the benefit checks from the State, he processed payments to the funeral home and to himself, sending the remaining funds to the beneficiaries.

We found that respondent's representation of the funeral homes' clients was for the sole purpose of obtaining their benefits to pay for funeral expenses, while simultaneously acting as the attorney for the funeral homes.

According to the stipulation, respondent has been Domingo Fuentes' attorney since 1998. The subject of the stipulation is respondent's representation of Fuentes in four loan transactions with Dr. Allen S. Glushakow. Glushakow loaned money to Fuentes at a rate of twelve percent. The loans were to be secured by mortgages on properties purportedly owned by Fuentes. However, Fuentes did not own the properties at the time of the loans.

The stipulation does not explain respondent's relationship to Glushakow. At oral argument before us, however, the OAE referred to him as respondent's client.

According to the stipulation, in October 2001, Glushakow acknowledged a writing prepared by respondent that set forth the terms of the arrangement:

> A. Glushakow's loans would be purchase money first mortgages on properties being purchased;
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> B. Glushakow would earn 12% interest per annum with monthly payments and the return of his principal investment within 120 days upon sale of the premises;
>
> C. Glushakow's loans were to be made payable to respondent's attorney trust account;
>
> D. Respondent was to apply the loan proceeds to purchase of properties as specified by Glushakow;
>
> E. Respondent was to apply the loan proceeds only if title was cleared to allow Glushakow a first purchase money mortgage lien;

> F. Respondent was to record the mortgage, provide Glushakow with a recorded copy and provide him with a title insurance policy insuring the mortgage as a first lien[.]
>
> [S¶3.][1]

The parties stipulated that, at the time respondent undertook the above cited responsibilities on Glushakow's behalf, "there was a significant risk that Fuentes' and Glushakow's interests could become adverse." Respondent did not inform Glushakow of the risk or obtain his informed, written consent to the arrangement, after full disclosure and consultation.

Fuentes defrauded Glushakow, as described below. According to the stipulation, "respondent was negligent but did not intend to assist Fuentes in the scheme."

I. 1025 Grove Street, Irvington, New Jersey

On April 25, 2001, a company owned by Fuentes, Lexis Realty Inc. (Lexis), purchased property at 1025 Grove Street, Irvington. On December 18, 2001 (eight months later), it sold the property to Daniel Vasquez. After Lexis sold the property, Fuentes used it as collateral to secure a loan from Glushakow.

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[1] S refers to the disciplinary stipulation, dated February 9, 2012.

On November 18, 2002, Glushakow made two loan disbursements to Lexis, totaling $90,000. The checks, made payable to respondent's trust account, contained the notation "1025 Grove Street," because the property was intended to serve as collateral for the loan. Respondent deposited the checks into his trust account.

Also on November 18, 2002, Lexis executed a $105,000 note and mortgage prepared by respondent. The amount was for Glushakow's $90,000 loan to Lexis, as well as a pre-existing $15,000 debt that Fuentes owed Glushakow. On November 22, 2002, the Essex County Register recorded the note and mortgage.

Respondent did not perform a title search, which would have revealed that Lexis no longer owned the 1025 Grove Street property.

Vasquez defaulted on his mortgage. On January 12, 2004, the mortgagee foreclosed on the property. On December 22, 2004, the mortgagee's successor, Wells Fargo Home Mortgage, Inc., transferred the property by quitclaim deed to Reo Management 2002, Inc.

Thereafter, on July 7, 2005, respondent represented another company owned by Fuentes, Greenwood Realty, Inc. (Greenwood), in the purchase of 1025 Grove Street from Reo Management 2002, Inc.

Respondent then represented Greenwood, on July 20, 2005, when it sold 1025 Grove Street to Jose Valdez.

Respondent did not record Glushakow's mortgage until Lexis no longer owned the property. Therefore, it was not "in the chain of title."

Fuentes did not pay Glushakow's mortgage.

II. 945 Bergen Street, Newark, New Jersey

On November 18, 2002, Glushakow loaned $125,000 to another company owned by Fuentes, 945 Bergen Realty, Inc. (Bergen Realty). The loan was to be secured by property located at 945 Bergen Street, Newark. At the time of the loan, the property was owned by William E. Reeves, not Bergen Realty.

On November 18, 2002, Glushakow issued a $125,000 check, containing the notation "945 Bergen Street." Respondent deposited it into his trust account.

Respondent did not obtain a title search, which would have revealed that Bergen Realty did not own the property. Respondent prepared the note and mortgage for the loan, but did not record the documents.

On May 17, 2005 (two and one-half years after the loan was made), Reeves sold the 945 Bergen Street property. Exhibit 13 shows that the sale was to Bergen Realty.

Fuentes did not repay Glushakow's loan.

III. 608 South Park Street, Elizabeth, New Jersey

Glushakow agreed to loan $100,000 to U & I Investment Company (U & I), another company owned by Fuentes. The loan was to be secured by property located at 608 South Park Street, Elizabeth. Respondent prepared the mortgage note, dated September 30, 2003. Fuentes executed the note.

On October 8, 2003, Glushakow issued a $100,000 check, payable to respondent, containing the notation "608 South Park Ave." Respondent deposited the check into his trust account.

Respondent did not immediately have the note or mortgage recorded. As a result, on November 4, 2003, when U & I sold 608 South Park Street to Zeidea Centeno, Glushakow's loan was not paid off from the sale.

After the sale was consummated, respondent prepared a mortgage for Glushakow's loan. By letter dated November 19, 2003, he transmitted the mortgage to the Union County Clerk's office to be recorded. The Glushakow mortgage was recorded on December 15, 2003, after U & I no longer owned the property.[2]

[2] Although the stipulation states that the mortgage was recorded on December 16, the exhibit shows that it was actually recorded on December 15, 2003.

IV. 18 Schley Street, Newark, New Jersey

On April 12, 2004, Glushakow issued a $75,000 check payable to respondent's trust account for a loan to Myrtle Avenue Realty, LLC (Myrtle Avenue), another company owned by Fuentes. The check contained the notation "18 Schley Street" in the "memo section." The loan was to be secured by a property located at 18 Schley Street, Newark. Respondent deposited the check into his trust account.

At the time Glushakow made the loan, the property was not owned by Fuentes or Myrtle Avenue, but by Citywide Realty Inc. Respondent failed to order a title search that would have uncovered the owner of the property.

Respondent prepared a note and mortgage, dated April 8, 2004, which Fuentes executed. However, respondent failed to record both documents.

Glushakow's loan was never repaid.

In 2007, Glushakow filed a malpractice action against respondent. The case settled, on March 3, 2010, for $400,000.

As to the proper quantum of discipline for this matter, the OAE noted that, although Glushakow suffered a significant pecuniary loss, he was made whole by his recovery in the malpractice action against respondent; that the passage of time

is a significant mitigating factor, because the events occurred ten years ago; and that respondent cooperated with the ethics investigation and entered into a stipulation of facts.

The OAE's position was that, because respondent's prior disciplinary matter, which also involved conflicts of interest, occurred "either before or contemporaneous" with this matter, his prior censure should not be considered a significant aggravating factor here. The OAE, thus, recommended the imposition of a censure.

Following a full review of the stipulation, we determine that the evidence clearly and convincingly establishes that respondent's conduct was unethical.

The stipulated facts demonstrate that respondent lacked diligence and was grossly negligent in his handling of the loan transactions. Respondent's conduct in the four transactions amounted to a pattern of neglect. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (at least three instances of neglect are required to establish a pattern of neglect) (slip op. at 12-16).

In the Grove Street, Bergen Street, and Schley Street matters, respondent failed to perform title searches, which would have revealed that Fuentes (as Lexis, Bergen Realty and Myrtle Avenue) did not own the properties, when he used them as

collateral for two November 18, 2002 loans and one April 12, 2004 loan from Glushakow. As to the South Park Street property, respondent did not prepare and record the mortgage or note until after Fuentes (U & I) sold the property. In all, Glushakow loaned Fuentes $405,000 for the four transactions and for a pre-existing debt.

Respondent also stipulated to violating RPC 1.7(a)(2). This rules states that a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by the personal interest of the lawyer." The OAE called Glushakow a client. Respondent stipulated that he did not inform Glushakow that there was a significant risk that Glushakow's and Fuentes' interests could become adverse and that Glushakow "did not give informed consent to the arrangement, confirmed in writing, after full disclosure and consultation." These requirements are mandated under RPC 1.7(b)(1). Therefore, we find that respondent's conduct violated RPC 1.7(a)(2).

The stipulation states that "respondent was negligent but did not intend to assist Fuentes in this scheme." We find that

respondent's conduct was beyond negligent; it was reckless. The first transaction, to which he stipulated, underscores this point. Fuentes purchased the Grove Street property as Lexis on April 25, 2001. Eight months later, on December 18, 2001, he sold the property to Daniel Vasquez but, nevertheless, used the property to secure the loan from Glushakow, on November 18, 2002. Respondent had the mortgage and note recorded on November 22, 2002, but never conducted a title search. After Vasquez defaulted on his mortgage, Fuentes once again purchased the property, but this time as Greenwood. Respondent once again represented Fuentes in the sale of the same property, as Greenwood.

We note that respondent had represented Fuentes since 1998 and that, each time he represented Fuentes in the four loan transactions from Glushakow, Fuentes used the name of a different entity. Respondent's failure to timely record the mortgages and notes and to order title searches to ensure that Fuentes was the rightful owner of the properties that were used as collateral for the loans was recklessness at best.

The OAE noted properly that, absent egregious circumstances or serious economic injury, a reprimand is the appropriate discipline for a conflict of interest. In re Berkowitz, 136 N.J. 134, 148 (1994). Accord In re Olivo, 189 N.J. 304 (2007); In re

Mott, 186 N.J. 367 (2006); In re Poling, 184 N.J. 297 (2005); In re Schnepper, 158 N.J. 22 (1999); and In re Kessler, 152 N.J. 488 (1998).

Discipline greater than a reprimand has routinely been imposed where egregious circumstances or serious economic harm resulted from the attorney's actions. See, e.g., In re Agrait, 207 N.J. 33 (2011) (censure for attorney who represented a buyer and seller in a real estate transaction without obtaining informed, written consent from the clients and subsequently representing the seller in litigation instituted against him by the buyer; the discipline was enhanced because of aggravating factors; specifically, the attorney failed to either notice or disclose the existence of a lien to the buyer, who then suffered "serious financial injury" by having to satisfy a $7,000 lien against the property, and the attorney had an ethics history, which included an admonition and a reprimand); In re DeClemente, 201 N.J. 4 (2010) (three-month suspension for attorney's misconduct in two matters; he engaged in a conflict of interest by negotiating a real estate contract on behalf of the buyer and seller and engaged in a business transaction with clients by purchasing two condominium units without disclosing his role in the transaction as lender and landlord; he also made misrepresentations by silence to the clients and actively misled

them about his role; in the second matter, he made misrepresentations and was guilty of conduct prejudicial to the administration of justice by failing to disclose to his adversaries his financial relationship with a judge, yet, appearing before him). In re Fitchett, III, 184 N.J. 289 (2005) (three-month suspension for attorney who represented a public entity incapable of consenting to the conflict, but then accepted a position with a firm that represented the entity's adversary; the attorney was guilty of switching sides; aggravating factors included that entity's loss of over $1 million, its responsibility for the repayment of outstanding loans, and the attorney's prior reprimand); In re Guidone, 139 N.J. 272 (1994) (three-month suspension; the attorney, who was a member of the Lions Club and represented the Club in the sale of a tract of land, engaged in a conflict of interest when he acquired, but failed to disclose to the Club, a financial interest in the entity that purchased the land, and then failed to fully explain to the Club the various risks involved with the representation and to obtain the Club's consent to the representation; a three-month suspension was imposed because the conflict of interest "was both pecuniary and undisclosed"); In re Swidler, 205 N.J. 260 (2010) (six-month suspension in a default matter; attorney guilty of engaging in a conflict of

interest in a real estate matter by representing the buyer and seller without obtaining their informed written consent, grossly neglecting the matter by failing to file the seller's mortgage, engaging in recordkeeping violation by depositing the sellers check for realty transfer fees into his business account, perpetrating a fraud by subsequently representing the buyer in the sale of the same property to the buyer's father, failing to disclose to the father's title insurance company that there was an open mortgage on the property, and failing to cooperate with disciplinary authorities; the attorney's ethics history included a reprimand and a three-month suspension); and In re Newton, 157 N.J. 526 (1999) (one-year suspension for engaging in multiple conflicts of interest in eight real estate transactions by representing the second mortgage holders and the buyers, preparing false and misleading HUD-1 statements and taking a false jurat; severe discipline was imposed because of the attorney's participation in the scheme to defraud lenders by drafting lease/buyback agreements to avoid disclosing secondary financing and misrepresenting the sale price and other information to allow the sellers to remain on the property).

The OAE recognized that Glushakow suffered "a significant pecuniary loss," but argued that, "in mitigation, he recovered $400,000 through the malpractice action and was made whole." We

disagree that Glushakow's actions to recoup his losses should enure to respondent's benefit, by being viewed as mitigation. While it is true that Glushakow was able to mitigate his damages, he initially incurred a substantial loss and had to go through the legal process to make himself whole. We find that Glushakow's considerable loss is the type of serious economic injury contemplated by Berkowitz.

The OAE also offered respondent's cooperation as a mitigating factor. We do not consider an attorney's cooperation as mitigation. All lawyers are duty-bound to cooperate in ethics investigations. R. 1:20-3(g)(3). Nevertheless, by stipulating his conduct, respondent acknowledged his wrongdoing.

The OAE further claimed that, because respondent's misconduct in this case occurred either before or contemporaneously with his misconduct in his first ethics matter, it should not be considered a significant aggravating factor. It is true that both cases involve conflicts of interest, the misconduct in each occurred around the same time, and that, therefore, this is not a case of failure to learn from prior mistakes. Nevertheless, his conduct in both matters evidences his propensity for violating the Rules of Professional Conduct.

We recognize that the passage of time between respondent's misconduct and the disposition of this case has some bearing on the proper quantum of discipline, as in DeClemente. Unlike DeClemente (three-month suspension), however, respondent's ethics history is not unblemished. DeClemente had no other discipline in his thirty-eight years at the bar.

While none of the above cases is directly on point, they provide a baseline against which respondent's conduct may be measured. The totality of the circumstances here are more serious than in Agrait (censure for representing the buyer and seller in a real estate transaction, then subsequently representing the seller against the buyer; $7,000 lien not satisfied; prior admonition and reprimand). Here, there were four transactions, thus four instances of conflict of interest, gross neglect, pattern of neglect, and lack of diligence; Glushakow lost $400,000; respondent should have known that Fuentes did not own the properties that he used as collateral; and respondent had a prior censure. The loss here ($400,000) was certainly not as great as in Fitchett (three-month suspension — loss of more than $1 million and the attorney had a prior reprimand).

We find that respondent's conduct is not deserving of a six-month suspension, as in Swidler. Swidler's discipline was

elevated, in part, because of the default nature of the proceedings and, in part, because he was found guilty of perpetrating a fraud in the resale of property, an element not present here. Similarly, in Newton, the attorney received a one-year suspension because she was found guilty of participating in a scheme to defraud the lenders in eight real estate transactions.

Because this record does not establish that respondent engaged in the fraudulent conduct, we find that a three-month suspension, rather than a greater discipline, properly addresses the gravity of his misconduct.

Member Clark did not participate.

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

Disciplinary Review Board
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Anthony J. La Russo
Docket No. DRB 12-062

Decided: July 18, 2012

Disposition: Three-month suspension

Members	Disbar	Censure	Three-month suspension	Disqualified	Did not participate
Pashman			X		
Frost			X		
Baugh			X		
Clark					X
Doremus			X		
Gallipoli			X		
Wissinger			X		
Yamner			X		
Zmirich			X		
Total:			8		1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel