SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-226
District Docket No. IIIB-2010-0023E

IN THE MATTER OF	:
RONALD J. STAGLIANO	:
AN ATTORNEY AT LAW	:

Decision

Argued: October 18, 2012

Decided: December 20, 2012

Karen Amacker appeared on behalf of the District IIIB Ethics Committee.

Carl D. Poplar appeared on behalf of respondent.

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

This matter was originally before us on June 21, 2012, on a recommendation for discipline (admonition) filed by the District IIIB Ethics Committee (DEC), which we determined to treat as a recommendation for greater discipline. R. 1:20-15(f)(4). The complaint charged respondent with having engaged in a conflict of interest, in violation of RPC 1.7(a) and (b) and RPC 1.8(a). We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1980. He has no prior discipline.

From 1996 through 2008, respondent was the solicitor (municipal attorney) for the Borough of West Wildwood (the Borough). Respondent testified that, because certain properties listed on a "paper street" had unpaid taxes for the years 1991 through 1997, the undeveloped properties were sold to the Borough at tax sale. In December 1999 and April 2000, the Borough instructed respondent to institute in rem foreclosure proceedings on those properties.

Respondent testified that, sometime before April 2001, an individual named Peter Byron made an offer to purchase the tax sale certificates for fifteen lots, including the fourteen lots that are the subject of this matter.

On April 6, 2001, the Borough passed a resolution for the transfer of the lots to Byron. According to respondent, Byron was unable to fund the purchase. Due to budget concerns, the Borough was reliant upon funds from the sale of the tax lien certificates. Accordingly, respondent "had some discussions with the Mayor and commissioners as to whether they wished [him] to talk to some people that [he] may know who may have an interest in taking the assignment." Those people were respondent's

brother, Robert Stagliano, and a long-time client/local developer, Pascale DiAntonio, who agreed to buy fourteen of the tax sale certificates.

On May 16, 2001, respondent formed West Isle Development, LLC (WID), with respondent as its registered agent. Robert and DiAntonio were its only members. Respondent advised the commissioners that his brother and DiAntonio were the principals of WID.

Thereafter, on August 13, 2001, respondent formed FDML, LLC. DiAntonio was its sole member. Although respondent was the registered agent for the entity, he claimed that he was unaware of DiAntonio's intentions for the LLC.

On August 28, 2001, after respondent had advised the mayor and commissioners of WID's intent to purchase the fourteen tax lien certificates, the Borough published a notice of a proposed private sale.

On September 7, 2001, the Borough passed a resolution allowing the assignment to WID of the fourteen tax sale certificates, upon its receipt of a cashier's check from WID for approximately $56,000.

Respondent testified that WID delivered the cashier's check for the full amount of the tax liens, prior to the Borough

meeting on September 7, 2001, and that there had been no other competitive offers presented to the Borough. Respondent also acknowledged that the Borough resolution had been prepared in advance of the September 7, 2001 meeting, at which time it was signed.

Christopher Fox, the mayor during the years that respondent was solicitor, testified at the ethics hearing. He informed the DEC that he was aware of respondent's involvement in the formation of WID for Robert and DiAntonio. Because the Borough was governed by commission, that body did not consider respondent's involvement to present a conflict of interest. In fact, the commission had been satisfied that respondent had made a full disclosure to it of his involvement in the transaction.

In his answer, respondent conceded that, at some point in time, he received a letter from Stewart Kay, an attorney interested in purchasing the tax sale certificates for the Borough properties. Kay's letter, the date it was written, and the date it was received by the Borough, are not part of the record developed below. Likewise, there was no testimony at the ethics hearing about Kay's offer. Nevertheless, respondent admitted to its existence in his answer.

In his answer, respondent also conceded that, on September 21, 2001, he sent a reply letter to Kay. That letter, too, may have contained information about Kay's offer, but was not made a part of the record below. Nor was respondent questioned about it at the DEC hearing. In his answer, respondent acknowledged that the letter had advised Kay that the tax sale certificates had been assigned to the Borough and that respondent, as solicitor, had received two requests to purchase the certificates, prior to Kay's.

Respondent also testified that, at "some point in time," FDML sought to buy some of the properties on which WID held the tax lien certificates. Therefore, on June 28, July 2, and July 23, 2002, either respondent or another attorney in his law firm prepared quitclaim deeds for some of the properties to FDML.

Taxes were paid on all of the properties until 2004, when FDML filed an appeal of the 2004 tax assessment and stopped paying taxes on the properties that it owned.[1] Although respondent did not testify directly on the issue of the payments

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[1] In a May 24, 2012 letter-brief to us, respondent's counsel asserted that taxes on the parcels had been paid through the second quarter of 2010.

to the Borough, in his answer he stated that, in addition to WID's original $56,000 payment for the certificates, the Borough had received another $170,000 in tax payments on the properties, which, as of March 2012, were still undeveloped tracts without water, sewer or utility service.

In 2005, WID filed two actions to foreclose the tax sale certificates on its properties and those belonging to FDML. In one of the matters, FDML was the defendant.

Respondent denied that his actions rose to the level of a conflict of interest. Respondent also pointed out that the version of RPC 1.7 in place at the time of the alleged misconduct differed from the version cited in the complaint, which had been amended, effective January 1, 2004.

At the DEC level, respondent's counsel defended respondent's actions, claiming that, in order to find a violation of RPC 1.7 or RPC 1.8(a), there must have been a failure on respondent's part to disclose the conflict or his actions must have had an adverse impact on the parties. In a letter-brief to us, however, respondent's counsel retreated from that position, conceding that, under RPC 1.7, "a public entity cannot consent to any representation when there was a concurrent conflict even if thee [sic] was notice and informed consent.

Notwithstanding that restriction, there is no assertion that the Respondent's involvement in the tax sale transaction was adverse to any client".

Counsel then cited mitigation:

> It is undisputed that the Respondent was at all times cooperative and candid during these ethics proceedings. The mayor at the time of the transaction testified in support of the Respondent. The activity of the Respondent was substantially and economically beneficial to the Borough of West Wildwood. The representation of the Respondent did not in any way materially limit his responsibilities to the Borough or to the purchasers of these tax liens. The passage of time from these events are [sic] now more than a decade. The current cost to the Borough to engage counsel to investigate, prepare the report and initiate this Grievance is clearly a burden on a small residential community.
>
> Although the Admonition Recommendation is the most modest form of discipline, it is submitted that this is a unique case. The Respondent and not the Grievance [sic] is on the high ground.
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> The nature of the assertion, the significance [sic] passage of time, the motivation for bringing the Grievance, the fact that there was no wilful or perceived violation by the Respondent and the fact that the activity of the Respondent resulted in a very significant and substantial benefit to a small residential community has been and is being urged as a justification

> for dismissal to the District Ethics Committee and now this Disciplinary Review Board.
>
> [Rb2.][2]

At the DEC hearing, respondent's counsel produced public notices that the current mayor had distributed, revealing the details of the Borough's ethics grievance, as well as a copy of an article published in the Cape May County Herald, which contained similar information. Counsel for respondent also presented five character letters from individuals attesting to respondent's honesty and good character.

The DEC found respondent guilty of violating RPC 1.7, citing subsection (a) of the rule, as it existed in 2001, when the misconduct occurred:

> A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless: (1) the lawyer reasonably believes the representation will not be adversely affected; and (2) the client consents after a full disclosure of the circumstances and consultation with the client, **except that a public entity cannot**

[2] "Rb" refers to the brief by respondent's counsel, dated May 24, 2012.

> **consent to any such representation.** When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the common implications of the common representation and the advantages and risks involved.
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> [HPR8.][3]

The DEC based its finding on the Borough's status as a public entity. As such, it could not consent to waive a conflict of interest. Specifically, as the Borough's attorney, respondent handled the legal aspects of the sale of tax lien certificates. At the same time, he represented the buyer of those certificates, a corporation whose only members were his brother and a client of long standing.

The hearing panel report went on to analyze potential conflicts between the parties and what it saw as an actual conflict between the Borough and FDML, that is, FDML's delinquency on its obligation to pay taxes on the properties.

The DEC found that respondent engaged in an improper dual representation, citing the per se prohibition contained in RPC 1.7.

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[3] "HPR" refers to the March 7, 2012 hearing panel report.

The DEC also cited A.C.P.E. Opinion 697, 188 N.J. 549 (2006), interpreting it to mean that an attorney

> represent[ing] the municipality as a solicitor may not appear on behalf of any private client before the municipality, including its Courts or lesser boards. In this case, this is just what the Respondent did. As solicitor of West Wildwood, New Jersey, he solicited the business of two entities which he had formed, one who was a family member and the other a client and brokered a deal between the Borough and the entities. In doing so, he was appearing on behalf of a private client before the municipality.
>
> [HPR11.]

The DEC dismissed the RPC 1.8(a) charge against respondent, dealing with improper business transactions with a client, inasmuch as

> nothing in the allegations contained within this Complaint [alleges] that the Respondent entered into a business transaction with a client or that he acquired an ownership, possessory, security or other pecuniary interest adverse to a client. At no point in time was the Respondent a principal in any of the entities which he developed for his brother or Mr. DiAntonio; he had no ownership, possessory, security or other pecuniary interest in their businesses.
>
> [HPR11.]

In mitigation, the DEC considered respondent's thirty-one years at the bar without prior discipline, his "candid" and

"unguarded" testimony, his admission that he "did not know what was required of him" by the conflict rules, and the lack of harm to the parties.

In recommending an admonition, the DEC considered that the "various mitigating factors . . . diminish the level of sanction of a reprimand necessary to address this violation." The DEC did not support its recommendation with case law.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Respondent's violation of RPC 1.7 is clear. As Borough solicitor, respondent initiated in rem foreclosures on a group of properties and began the process of placing for sale tax lien certificates for the fourteen properties. He then arranged a deal whereby WID and FDML, entities that he formed as attorney for his brother and DiAntonio, a long-time client and local developer, would purchase the tax lien certificates on the properties.

Although the entire transaction took place in the light of day and was approved by Borough resolution, respondent acted in behalf of both buyer and seller to the transaction, an impermissible situation under RPC 1.7, as seen below.

In 2001, when the present conduct occurred, RPC 1.7(a) read as follows:

> A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:
> (1) the lawyer reasonably believes that representation will not adversely affect the relationship with the other client; and
> (2) each client consents after a full disclosure of the circumstances and consultation with each client; **except that a public entity cannot consent to any such representation** [emphasis added].

Subsection (2) describes an unwaivable conflict. No amount of informed consent from the parties can overcome the prohibition against the Borough "consent[ing] to any such representation." For respondent's participation in an unwaivable conflict of interest, he is guilty of having violated then-RPC 1.7(a)(2), which, post-January 1, 2004, became RPC 1.7(b)(1).

Respondent's counsel argued, below and in his May 24, 2012 brief to us, that the complaint should be dismissed for several reasons. First, respondent did not hide any of his actions, when representing the various parties to the deal. Moreover, respondent did not intend to violate the RPCs, no harm came to the parties, ten years had elapsed since the actions took place, and the grievance may have been politically motivated.

Even if true, these factors go to mitigation, not to the existence or non-existence of the ethics infraction. With regard to the motivation for the grievance, it is not a mitigating factor. To the extent that the new administration unearthed ethics infractions by respondent, it rightfully alerted ethics authorities. More compelling yet, a law firm retained by the Borough, Gruccio, Pepper, De Santo & Ruth, P.A., conducted the investigation and may have considered itself duty-bound, under RPC 8.3, to alert ethics authorities to its discovery.

Respondent's counsel filed a second brief with us, dated September 12, 2012. In it, he reiterated his earlier arguments that this matter was politically motivated and stale. He also presented new facts, culled from several documents that are not a part of our record. For example, in his introduction to the new brief, counsel quoted extensively from a May 27, 2010 letter-response from the Gruccio firm, which was not offered as evidence below. So, too, there was no testimony from anyone associated with the Gruccio investigation to clarify its meaning. Rather, counsel relied on other documents that are also not in our record, including a May 10, 2010 reply to the grievance that he filed for respondent.

Further, counsel for respondent offered us an "Undisputed Statement of Facts." These "undisputed" facts differ from, and are far more detailed than, those facts stipulated at the hearing, facts adduced from witness testimony, or facts contained in the exhibits in evidence before us. We determine that the only undisputed facts are those stipulated by the parties as paragraphs one through fourteen of the ethics complaint.

Because some of the contents of respondent's brief to us appear for the first time now and because some of them are material to the ethics matter, we did not consider respondent's "Undisputed Statement of Facts," when reviewing the matter.

Having said that, counsel gained little traction for his client with the second brief. His most cogent argument was that, although respondent represented both the seller and the buyer in the sale of tax sale certificates, the transaction "did not have any adverse effect" on either client, the seller/Borough or the buyer/WID. In fact, counsel stated that the "goal and the entitlement of the Borough was to have delinquent real estate taxes paid. The real estate taxes at issue that were delinquent for several years" were paid.

In essence, counsel argued that, because neither client to the conflict was harmed and because there may have been some good that came from pressing on with the improper dual representation, respondent should be absolved of the unwaivable conflict. Nevertheless, a purpose of RPC 1.7 is to prevent "cozy" relationships, like those present here, from forming the basis of public entity business transactions. The unwaivable conflict here cannot be absolved by a good result, even assuming that the result was a good one.

Respondent also posited the passage of time as a reason for dismissal, because the conduct was "stale." The passage of time is no defense to an ethics charge, although it may go to mitigation.

Like the DEC, thus, we find that respondent violated former RPC 1.7(a)(2).

As to the charged violation of RPC 1.8, the DEC correctly dismissed it. There was no evidence adduced at the hearing that respondent entered into a business transaction with the Borough. Therefore, we, too, dismiss the RPC 1.8(a) charge for lack of clear and convincing evidence.

Since 1994, it has been a well-established principle that a reprimand is the measure of discipline imposed when an attorney

engages in a conflict of interest. In re Berkowitz, 136 N.J. 148 (1994). Accord, In re Mott, 186 N.J. 367 (2006) (attorney prepared, on behalf of buyers, real estate agreements that provided for the purchase of title insurance from a title company that he owned; notwithstanding the disclosure of his interest in the company to buyers, the attorney did not advise buyers of the desirability of seeking, or give them the opportunity to seek, independent counsel, and did not obtain a written waiver of the conflict of interest from them) and In re Poling, 184 N.J. 297 (2005) (attorney engaged in conflict of interest when he prepared, on behalf of buyers, real estate agreements that pre-provided for the purchase of title insurance from a title company that he owned — a fact that he did not disclose to the buyers, in addition to his failure to disclose that title insurance could be purchased elsewhere).

In special situations where compelling mitigation has warranted it, we have imposed admonitions on attorneys who have violated the conflict of interest rules post-Berkowitz and Guidone. See, e.g., In the Matter of Cory J. Gilman, 184 N.J. 298 (2005) (attorney admonished for, among other violations, an imputed conflict of interest (RPC 1.10(b)), based upon his preparation of real estate contracts for buyers requiring the

purchase of title insurance from a company owned by his supervising partner; in imposing only an admonition, we noted the following "compelling mitigating factors": this was his "first brush with the ethics system; he cooperated fully with the OAE's investigation, and, more importantly, he was a new attorney at the time (three years at the bar) and only an associate") and In the Matter of Frank Fusco, DRB 04-442 (February 22, 2005) (an admonition was imposed in a consent to reprimand matter for a single violation of RPC 1.7(a), where we noted that the attorney, who represented the buyer and seller in a real estate transaction without their consent, "did not technically engage in a conflict of interest situation" because no conflict ever arose between the parties to the contract; mitigation included that (1) the attorney did not negotiate the terms of the contract but merely memorialized them; (2) the parties wanted a quick closing "without lawyer involvement on either side;" (3) the attorney was motivated by a desire to help friends; (4) neither party was adversely affected by his misconduct; (5) the attorney did not receive a fee for his services; and (6) he had no disciplinary record).

The mitigation presented in this matter does merit some attention. Respondent has no prior discipline, in thirty-one

years at the bar; about ten years have elapsed since the events occurred; respondent's actions were never hidden; and there was no apparent harm to the parties.

Even so, we find that two troubling aspects of respondent's misconduct act as aggravating factors and are convinced that a sanction greater than an admonition is appropriate.

First, respondent was acting in his capacity as a public official when representing the Borough. In In re Magid, 139 N.J. 449, 455 (1995), the Court held that

> Attorneys who hold public office are invested with a public trust and are thereby more visible to the public. Such attorneys are held to the highest of standards. Respondent's conduct must be viewed from the perspective of an informed and concerned private citizen and be judged in the context of whether the image of the bar would be diminished if such conduct were not publicly disapproved. In re McLaughlin, 105 N.J. 457, 461, 522 A.2d 999 (1987) [citation omitted].

Respondent, too, must be held to a higher standard, in order to maintain the public's faith in its public officials.

Second, after purchaser Byron lost his financing, respondent did not present the Borough with just any buyer. Rather, he presented his own brother, whose interests would naturally be seen by the public as closely aligned with those of respondent. When that factor is combined with the heightened

duty to act ethically as a public official, this significant aggravation outweighs the mitigation presented.

Parenthetically, the hearing transcript shed no light on another aspect of the transaction that concerned us, specifically, the date or "timing" of attorney Kay's letter expressing interest in the tax lien certificates on behalf of another party. If that inquiry had been made before the September 7, 2001 Borough resolution and private sale to WID, respondent would have been compelled to halt the special, private sale that he brokered for his brother and DiAntonio.

This aspect of the transaction was not discussed at the hearing below, however. Thus, we have no information about the timing of Kay's offer and cannot make any findings with regard to the Kay proposal.

Nevertheless, we determine that the aggravating factors – respondent's position as a public official and the appearance to the public that his interests were closely aligned with those of his brother, require the imposition of a reprimand.

Member Doremus 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 Ronald J. Stagliano
Docket No. DRB 12-226

Argued: October 18, 2012

Decided: December 20, 2012

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	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
Chief Counsel