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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. 95-079

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IN THE MATTER OF  
RICHARD K. SILBERBERG  
AN ATTORNEY AT LAW

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Decision of the  
Disciplinary Review Board

Argued: May 17, 1995  
Decided: October 2, 1995

Patricia Hernandez appeared on behalf of the District XII Ethics Committee.

Respondent appeared pro se.

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

This disciplinary matter arose from a complaint charging respondent with witnessing and notarizing the signature of an individual at a closing of title, knowing that, at the time, the individual was deceased. The complaint further charged respondent with lying to the District XII Ethics Committee (DEC) investigator that the individual had attended the closing of title.

Respondent was admitted to the New Jersey bar in 1970. He has no history of discipline.

The facts that give rise to this ethics proceeding are as follows:

Joseph Villaggio, Jr., a real estate salesperson for an agency owned by respondent's brother, contracted to purchase a house in

his name and that of his wife-to-be. It appears that Mr. Villaggio's parents were to be co-borrowers as well, of which respondent was allegedly unaware prior to the closing of title. Respondent testified that it was only at the closing of title that he discovered, for the first time, that the names of Mr. Villaggio's parents were on the closing documents. Respondent explained that he had not assisted the parties in the preparation of the mortgage application and that the mortgagee, not he, had prepared the closing documents. (At the DEC hearing, the presenter conceded that there was no evidence that respondent had any knowledge of that circumstance prior to the January 16, 1987 closing date). After respondent received the closing documents from the mortgagee, he prepared a RESPA statement and an affidavit of title bearing the names of Mr. Villaggio, his fiancée and Mr. Villaggio's parents. The record is silent as to whether respondent prepared those documents before the closing or at the closing itself.

According to respondent, when he discovered that Mr. Villaggio's father was also a co-borrower and that he was not present at the closing, he questioned Mr. Villaggio about his father's absence. Respondent alleged that Mr. Villaggio replied that he had a power-of-attorney from his father. Respondent claimed that, when he asked Mr. Villaggio to see the power-of-attorney and Mr. Villaggio did not produce it, he first refused to go ahead with the closing; he then allowed Mr. Villaggio to sign his father's name on the closing documents. Respondent testified

that "[a]t that point I don't know why the documents were signed [by Mr. Villaggio]. Apparently either I gave in in a weak moment." T7/6/1994 20. Respondent then witnessed and notarized Mr. Villaggio's father's "signature."

Respondent stipulated that he knew that Mr. Villaggio's father was deceased at the time of the closing; that he witnessed and notarized the "signature," aware that the father was deceased; and that it was wrong on his part to proceed with the closing.

The closing of title took place on January 16, 1987. Mr. Villaggio's father died on November 26, 1986. Respondent denied knowledge, prior to closing, of Mr. Villaggio's father's death. He contended that, although he had attended the wake, he did not know then the identity of the deceased. He asserted that he had been asked by his brother, Mr. Villaggio's employer, to attend the wake of a relative of Mr. Villaggio.

\* \* \*

When the DEC investigator asked respondent to reply to the grievance (apparently, the Union County Prosecutor's Office referred this matter to the DEC), respondent submitted a letter dated July 29, 1992, stating as follows:

I have reviewed a copy of the grievance in the above matter.

I did conduct the real estate closing referred to in the grievance. Joseph Villaggio, Jr. appeared in my office with his parents and the necessary documents were executed. Since the matter occurred over six years ago, I do not

have a specific recollection of other than the executed documents referred to. If I can be of further assistance, please feel free to contact this office. (Emphasis supplied).

[Exhibit P-1]

At the DEC hearing, respondent conceded that the contents of that letter were untrue. He contended that the letter had been "sent out in haste."

In addition, in a seven-page certification submitted to the DEC on March 4, 1993 (Exhibit C-3), respondent falsely stated that, after he asked Mr. Villaggio to produce the power-of-attorney at the closing, he became suspicious and informed Mr. Villaggio that he would hold the closing documents until the close of the business day and then return them to the lender if the matter was not satisfactorily resolved. According to the certification, Mr. Villaggio instructed respondent to hold the documents until he could present his father for the execution of the documents. Respondent then recounted how Mr. Villaggio had returned to his office with an "elderly gentleman" at a time when respondent was apparently out to lunch and how, upon his return, he had been informed by his secretary that Mr. Villaggios' father had signed the documents. The certification, of course, was untrue. At the DEC hearing, respondent admitted that he had proceeded with the closing notwithstanding his knowledge that Mr. Villaggio's father was deceased.

In mitigation, respondent advanced that his misconduct was an isolated act. He pointed to the fact that ninety percent of

his practice consists of real estate matters and that, in a three- and one-half-year period, sixty million dollars went through his trust account for closings of title, without incident. Respondent also urged the consideration that he had no prior discipline since his admission to the New Jersey Bar in 1970; that his misconduct occurred in 1987; that he was under time constraints because this was a "HUD closing" that had to be consummated within sixty days or the deposit would be forfeited; and that he derived no self-profit from his actions.

Lastly, respondent raised the affirmative defense of retraction to perjury (his knowingly false statements to the DEC).

\* \* \*

At the conclusion of the ethics hearing, the DEC found that respondent's conduct involved dishonesty, fraud, deceit or misrepresentation, in violation of RPC 8.4(c), and criminal conduct that adversely reflected on his honesty, trustworthiness, or fitness as a lawyer, in violation of RPC 8.4(b). As to the latter rule, the DEC noted that respondent's conduct had violated N.J.S.A. 2C:21-1(a), which states as follows:

Forgery. A person is guilty of forgery if \* \* \* with knowledge that he is facilitating a fraud or injury to be perpetuated by anyone, the actor \* \* \* (2) \* \* \* authenticates \* \* \* any writing so that it purports to be the act of another who did not authorize that act or of a fictitious person \* \* \* .

The DEC rejected respondent's defense of retraction, reasoning that, because respondent was not charged with perjury, the retraction was not applicable to the violation charged — the making of a false statement of material fact during a disciplinary proceeding. Accordingly, the DEC found that respondent had lied to the DEC, in violation of RPC 8.1(b).

In mitigation, the DEC found that respondent was cooperative, forthright and apologetic for his actions. The DEC rejected, as mitigating circumstances, respondent's statements (1) that his misconduct was, in part, caused by the fact that he was very busy at the time that the grievance was being investigated and that, hence, he did not properly reflect on the contents of his letter; (2) that he was under pressure to proceed with the closing because Mr. Villaggio could lose his deposit; and (3) that he was under a lot of stress because of another ethics proceeding initiated by his brother.

\* \* \*

Following a de novo review of the record, the Board is satisfied that the DEC's conclusion that respondent's conduct was unethical is fully supported by clear and convincing evidence. The DEC properly found that respondent knew, at the closing, that Mr. Villaggio's father was deceased and that respondent nevertheless witnessed and notarized the "signature" in order to proceed with

the transaction. Respondent also made false statements of material fact to the DEC on two separate occasions:

Parenthetically, there was a question at the DEC hearing about whether respondent knew prior to the closing that Mr. Villaggio's father was deceased, because he had attended his wake. Respondent testified that he did not know the identity of the deceased when he appeared at the wake. Although the Board finds that statement unworthy of belief, respondent's knowledge in this regard is irrelevant to the ethics offenses charged. Respondent alleged that he did not discover that Mr. Villaggio's father was a party to the transaction until the day of the closing. The presenter admitted that there was no evidence to the contrary. Accordingly, whether respondent knew about Mr. Villaggio's father's death before the closing is of no moment if there is no competent proof that respondent was aware that Mr. Villaggio's father's name was on the closing documents. Clearly, respondent's knowledge of Mr. Villaggio's death would be crucial if he had been charged with knowledge, prior to the closing, of the father's participation in the transaction. Respondent was not, however, charged with that offense. Indeed, when respondent attempted to persuade the DEC that he had no idea before the closing that Mr. Villaggio's name would be on the note and on the mortgage, he was interrupted by the panel chair:

Panel Chair: Let me stop you a minute. I don't want to end up having to repeat everything you put in your certification because that is going to be a Committee exhibit that I was going to enter immediately after the

opening statement. It was my impression that you wanted to indicate the things that you were willing to admit to stipulate so as to save time. To the extent that you are trying to put in mitigating circumstances on defense, that would have to await until your opportunity to present your side of the case. All I am interested in right now is what you have indicated as an offer to admit or stipulate as to avoid the necessity of having to prove that particular aspect. That is what I want to limit you to right now.

Presenter:

\* \* \* The thrust of my complaint does not encompass any allegations of knowledge on your part of the activities of Mr. Villaggio and any co-conspirator he may have had with regard to fraudulent loan application. The thrust of this complaint is only your activity in witnessing the signature of Mr. Villaggio's father. That's the only allegation. It encompasses various ethics rules, but that's the only allegation of wrongdoing. So I don't believe it is necessary, unless the Committee wants to hear more, for you to explain where and when and under what circumstances you became aware of the legality of Mr. Villaggio's activity.

Panel Chair:

If the real issue here is whether you did improperly witness the signature of a deceased person and whether that was with knowledge or without knowledge of the fact that he was deceased, as far as I am concerned that's the real issue. If you are willing to or desire to make any stipulations or admissions with respect to those issues, that is what I want to hear from you \* \* \* .

[T7/6/1994 9-10]



It is clear, thus, from that exchange that the only issues before the DEC were (1) respondent's improper witnessing and notarizing of Mr. Villaggio's father's signature with knowledge that he was deceased — as well as the consequences that flowed therefrom to the extent that respondent signed closing documents that contained false information — and (2) respondent's false statements to the DEC.

In sum, respondent knowingly affixed his jurat on documents that contained a forged signature and signed closing documents with the knowledge that they contained material misrepresentations, thereby assisting Mr. Villaggio in defrauding the lender. Respondent's conduct was, thus, fraught with elements of fraud and forgery. In addition, he twice lied to the DEC: first in a letter and then in a certification. Respondent's conduct is deserving of a period of suspension. See In re Labendz, 95 N.J. 273(1994) (attorney suspended for one year for knowing participation in an attempt to defraud a bank. The attorney submitted a false loan application to secure a mortgage for his client. Although the contract provided for a purchase price of \$100,000, the application falsely listed it as \$107,000 in order to enable the clients to obtain a higher mortgage); In re Stier, 108 N.J. 455(1987) (one-year suspension for conviction of disorderly person's offense of tampering with public records by making false entry in document of record. In two separate real estate ventures over a two-year period, the attorney recorded documents that he knew contained inflated purchase prices); In re Weston, 118 N.J. 477(1990) (two-

year suspension for, among other things, signing sellers' names on a contract without sellers' knowledge and for lying to buyer's attorney that the signatures were genuine); In re Lunn, 118 N.J. 163(1990) (three-year suspension for submitting a false written statement by a witness in support of attorney's own claim for personal injuries and for lying under oath about the authenticity of the statement). But see In re DiBiasi, 102 N.J. 152(1986) (three-month suspension for yielding to client's request not to reveal to mortgagee that lease was false. In imposing only a three-month suspension, the Court considered that six years had elapsed since the offense; that the attorney was inexperienced and without proper supervision from partners; that the attorney did not obtain any personal gain; and that his conduct was aberrational).

After consideration of the relevant circumstances, which included the pattern of deceit displayed by respondent, the Board unanimously voted to suspend him for a period of two years:

The Board further required respondent reimburse to the Disciplinary Oversight Committee for administrative costs.

Dated:

5/2/95



LEE M. HYMERLING  
Chair  
Disciplinary Review Board