SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 91-135

IN THE MATTER OF

FREDERICK S. SCHOFIELD, III,

AN ATTORNEY AT LAW

Decision and Recommendation
of the
Disciplinary Review Board

Argued: September 25, 1991

Decided: November 12, 1991

Gregory F. McCloskey appeared on behalf of the District III-B Ethics Committee.

Arthur Montano appeared on behalf of respondent.

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

This matter is before the Board based upon a recommendation for public discipline filed by the District III-B Ethics Committee ("DEC"). The formal ethics complaint alleged that respondent (1) created a conflict of interest situation, by entering into a business relationship with clients in which they were unrepresented by separate counsel, (2) charged the clients excessive legal fees and (3) made misrepresentations on a mortgage loan application.

The facts are as follows:

Respondent was admitted to the New Jersey bar in 1977. He is a sole practitioner in Brigantine, New Jersey. In early 1986, Stanley and June Joyce consulted with respondent about a writ of execution on a $4,500 judgment levied against their house, located

in Vincentown, County of Burlington, in an area known as the Pinelands (hereinafter "the Vincentown house" or "the house"). Respondent had previously represented the Joyce family in other matters.

The Joyces' ownership of the Vincentown house came about as follows: for fifteen years preceding 1981, the Joyces and their young children resided first in a rented one-bedroom "bungalow" in Mount Laurel and then in a rented three-bedroom house in Medford. In 1981, they moved into the house of Stanley's elderly and infirm aunt, Anna Shemelia, to care for her and for her sister-in-law, who lived with Shemelia and who was also in frail health. By everyone's account, the house was in great disrepair. In addition, it had no bathtub or shower and no central heating system. A kerosene heater located on the first floor was the sole source of heat, which rose to the second floor through holes in the first floor ceiling. Seven people lived in the house: Shemelia, her bedridden sister-in-law, the Joyces and their three children.

Approximately two months after the Joyce family moved into the house, Shemelia had a stroke. She was then placed in a convalescent home, where she remained for seven months. When the monthly payments exhausted her lifetime savings of $25,000, Shemelia had to return home. Shemelia's and her sister-in-law's social security checks of $375 and $225 per month, respectively, of which June Joyce was the payee, ostensibly went for their care. In 1986, Shemelia died. Her sister-in-law then went to a convalescent home. Prior to her death, however, Shemelia had conveyed title to

the house to the Joyces.

As noted above, early in 1986, the Joyces consulted with respondent about the satisfaction of a $4,500 judgment for hospital expenses incurred by Shemelia. With no economic means other than the salaries earned from their modest employment, the Joyces informed respondent of the impossibility of paying off the judgment. Threatened with losing their house, they sought respondent's advice on how to avoid a sale of the house to satisfy the judgment.

According to respondent, to work out a payment schedule with the judgment-creditor was out of the question; the Joyces had already defaulted on a prior agreement for installment payments. The most viable solution was to obtain a mortgage loan from a lending institution. To that end, respondent had the Joyces sign about fifteen different loan applications that respondent intended to submit, in the Joyce's behalf, to the respective banks. In many instances, respondent personally delivered the applications and discussed with senior bank officers the possibility of their granting a loan to the Joyces. One by one, however, the applications were rejected because of the Joyces' poor credit rating.[1]

In light of the impossibility of obtaining a bank loan for the Joyces, respondent began to explore other alternatives to help them out of their predicament. Those alternatives included obtaining a

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[1]The Joyces had defaulted on their automobile loan obligations, which remained unsatisfied. For reasons not entirely clear, the creditor elected not to repossess the automobile.

loan from their relatives, filing for bankruptcy or selling the house. The Joyces discarded the first option as impossible, the second as unacceptable and the third as unthinkable.

According to respondent's testimony, the Joyces then asked him for a loan. Respondent replied that he did not have sufficient funds to assist them. It was then that June Joyce began to plead with respondent's wife, during June's frequent telephone calls to respondent's house, to persuade respondent to lend them the monies to satisfy the judgment.[2] As respondent testified,

> . . . June Joyce can be very convincing. I found her to be very compelling in my dealings with her. She pleaded with Marlene to impose upon me to lend the money, and my wife explained to her, 'we don't have that kind of money. We can't lend the money.' And Marlene has a good soul. She came to me and asked me if I couldn't do something for the Joyces.

[T11/19/1990 99]

Indeed, as corroborated by respondent's wife's testimony,

> . . . we had a phone at home, and [June Joyce] got to calling at home.
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> In fact, I will say that I don't think Fred would be in this mess if it weren't for me. That's why I'm here. I feel very responsible. This June Joyce, once she found out I was at home, she started calling me at home and telling me this story about their circumstances.
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> Now, I never got involved in Fred's business in that respect, but she was very, very persuasive and, in fact, Fred, when I mentioned this whole thing to him, that this woman is begging for help, he constantly said that he didn't want to get involved.

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[2]Although June Joyce denied having made such pleas, respondent's wife's testimony is in accordance with respondent's.

> You know, I never said to Mrs. Joyce, please don't call me at home, but this woman was very diligent and very persuasive and very, in retrospect, very shrewed [sic] and she got on my soft side, I'm afraid, and started giving me the sob story about the house that the family had for years that they were going to lose and couldn't Mr. Schofield and I help her, this, that and the other thing.
>
> . . .
>
> And I think I -- I am sure had I not done that, that Fred would have stayed as firm as he had initially been in this whole thing and not wanted to get involved.
>
> But she did a number on me and I, in turn, did a wifely number on him. And I felt sorry for these people. Little did I know that they would reek [sic] havoc on our family for years to come. . . .
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> [T12/5/1990 53-54]

It was then that, with the intent to help the Joyces, respondent devised a convoluted transaction involving a conveyance of title from the Joyces to him and the grant to the Joyces of an option to purchase the property. Respondent explained the terms of the transaction to the Joyces, who accepted them[3]. Pursuant to their agreement with respondent, the Joyces would convey title to the Vincentown house to respondent who, in turn, would apply for a mortgage loan in his name, for the Joyces' benefit, using the house as collateral. The loan proceeds would be applied toward the satisfaction of the hospital judgment, another judgment for heating

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[3]Indeed, in the litigation that ensued between the Joyces, as plaintiffs, and respondent, as defendant, the court found that ". . . the transaction evolved between April 1 and July 18 by a series of changes which, I conclude, were explained to and agreed upon by the Joyces." (Exhibit P-3 at 11).

fuel, respondent's counsel fees, the closing costs, title insurance and, lastly, the installation of a central heating system, as required by the lending institution.

With the conveyance of title to respondent there would be no transfer of monies to the Joyces. They would retain possession of the house as tenants, in exchange for monthly rental payments in an amount sufficient to pay the loan installments, real estate taxes and hazard insurance. At the expiration of the loan (fifteen years), title to the house would be automatically conveyed back to the Joyces without any further payments. In the event that the Joyces elected to exercise their option to purchase the property prior to the end of the fifteen-year period, they would pay, in a lump sum, the balance owed on the lease. Should the Joyces default on their rent obligations or choose not to exercise the option to buy the house, then all sums paid to respondent would be considered as rent.

The Joyces were not represented by separate counsel in that transaction. Respondent contended that he had informed the Joyces that, prior to entering into a business relationship, they had to terminate their attorney-client relationship. He also maintained that he had urged the Joyces to obtain the advice of independent counsel by consulting with an attorney recommended by respondent. The attorney and respondent had shared office space in the past. The Joyces denied that respondent had advised them to consult with an attorney. In any event, the contract of sale contained the following language:

> 29. Buyer is an attorney-at-law. Seller understands that buyer is an attorney-at-law of the State of New Jersey and that buyer is not representing seller in any way with regard to this transaction; nor has buyer rendered seller any legal advice regarding same. Seller has read and understood all of the terms and conditions of this contract before signing it. Sellers have either consulted an attorney of their own selection before signing this contract or have freely decided to sign this contract, intending to be legally bound by it, after having been advised to consult an independent attorney of their own selection before signing.
>
> [Exhibit P-1]

Initially, respondent calculated that the expenses that had to be paid -- the two judgments, the installation of the central heating system, closing costs and fees, etc. -- would total $10,000. Accordingly, on April 1, 1986, he and the Joyces signed a contract of sale listing the purchase price as $10,001 (Exhibit P-1). Eventually, respondent learned that those expenses would actually amount to $19,000. Instead of applying for a $19,000 loan, however, respondent applied for a $50,000 loan. He did not inform the Joyces of this fact. He had decided to utilize the balance of the loan, which was secured by a mortgage on the Vincentown property, to improve a "fixer-up" house that he and his wife had purchased.[4]

In the loan application, respondent misrepresented to the bank that he had title to the Vincentown house and that the Joyces paid

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[4] The record is silent as to why respondent did not use his own real estate to secure a loan for himself.

him a $325 net monthly rental income (Exhibit P-12). That, of course, was untrue as respondent neither had title to the house nor received rental payments from the Joyces as of the date of the application. The bank approved a fifteen-year mortgage loan, for $40,000, and not $50,000, as requested by respondent, at a 10.75% interest rate. The bank's appraisal listed the property value as $85,000.

Out of the $40,000 loan, $19,000 were to be applied to the Vincentown property. A balance of $21,000 remained, to be used for respondent's own purposes. Respondent did not inform the Joyces that he had obtained a mortgage loan in excess of $19,000, secured by the Vincentown house.

On July 18, 1986, the Joyces signed a deed conveying title to the Vincentown house to respondent for the sum of $19,000 (Exhibit P-4). They were not represented by separate counsel. On that same date, still unrepresented by counsel, he and the Joyces signed a lease agreement as landlord and tenants of the Vincentown house, respectively, providing for the payment of $400 per month as rent (Exhibit P-2). The term of the lease was for fifteen years, to coincide with the life of the mortgage loan. The $400 rent covered the monthly payments on the $19,000 portion of the loan (approximately $213[5], Financial Eighth Rate Mortgage Tables, Pub. No. 267, Financial Publishing Co. (1984)), the real estate taxes ($775 a year or approximately $65 a month) and the hazard insurance

[5] Respondent also remitted to the bank additional payments to cover the $21,000 portion of the loan for which he was responsible.

premium ($460 a year or approximately $38 a month), for a total of $316 a month ($213 + $65 + $38). According to respondent's testimony, included in the rent payments was an eighteen percent "service charge" of approximately $900 a year that respondent kept for himself. As respondent explained to the hearing panel,

> A. [The service charge] was $76 a month, and above taking care of the obligations which totaled 19,000, and above taking the insurance, and above taking the real estate taxes. $76 and some pennies a month.
>
> Q. And what was that for? The $76? Was that for any costs incurred in connection with the Joyce transaction?
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> A. It was just over and above. At this point in time, I didn't think they were my client and I thought I was entitled to take something.
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> As it turned out, so many of the checks bounced and the followup became significant on that that there was time expended on the thing.[6]

[T12/5/1990 35]

On July 28, 1986, respondent sent a letter to the Joyces, listing the following expenses incurred in the transaction:

loan application fees and points	$ 1,200.00
hazard insurance	$ 457.22
real estate taxes	$ 763.00
settlement fee to title company	$ 100.00
document preparation fee	$ 25.00

[6] Respondent was referring to twelve signed and post-dated checks that he had obtained from the Joyces for rental payments.

lender's attorney's fee	$ 75.00
title insurance	$ 526.00
senior citizen disallowance	$ 250.00
recording fees	$ 47.00
state tax	$ 66.50
warrants to satisfy judgment	$ 4.00
survey	$ 950.00
exterminator's charges	$ 583.00
heating system	$ 3,500.00
satisfaction of hospital judgment	$ 4,644.66
satisfaction of heating fuel judgment	$ 143.95
appraiser's fee	$ 200.00
legal fees and costs	$ 5,527.04
	$19,000.00

[Exhibit P-5]

According to respondent, sometime in September 1987, June Joyce informed him that she wished to quit her job as a bus driver and that, consequently, it would be difficult to continue to make the rental payments. After some discussion between the parties, it was agreed that the house would be placed for sale. Accordingly, on September 24, 1987, respondent and the Joyces signed an addendum to the lease agreement whereby, upon the sale of the house, the Joyces would receive $60,000 (Exhibit P-6). Once again, the Joyces were unrepresented by independent counsel. Respondent explained that the $60,000 sum was calculated by starting with the $85,000 appraisal and then deducting the $19,000 loan plus real estate commission and closing costs.

Thereafter, the house was placed for sale but at a much higher price than its appraised value of $85,000. Indeed, a copy of the advertisement in the multiple listing service book lists a purchase

price of $139,900 (Exhibit P-13). This figure was not disclosed to the Joyces.

In the interim, the Joyces had begun to look for houses that fit their taste and their budget. They found none. They also experienced difficulty in paying rent to respondent. At this juncture, they consulted with an attorney, Alan B. Baybick, who, after reviewing the transactions between the Joyces and respondent, notified respondent that no more rental payments would be forthcoming and demanded that respondent transfer ownership of the house to the Joyces. Respondent then retained counsel and filed a summary dispossess action. When the Joyces instituted an action to recover title, the two proceedings were consolidated in the Superior Court, Chancery Division. Among other things, the Joyces alleged that respondent had forged their signatures on the contract of sale, on the deed and on the lease, a contention that the court found wholly unsupported by the record.[7] The court did find, however, that respondent had not effectively terminated the attorney-client relationship with the Joyces. The court rejected respondent's argument that the language contained in paragraph 29 of the contract of sale, as well as in the lease and its addendum, ended his legal representation of the Joyces' interests. The court further found that, although respondent had explained the terms of

[7] After respondent sought counsel fees and costs against the Joyces by way of a post-trial motion, the court assessed $2,000 in counsel fees against them because of their refusal to acknowledge ". . . what seemed to be apparent from the outset. That these signatures on these documents were theirs" (Exhibit D-1 at 30).

the transaction to the Joyces, he had failed to disclose the increased risks arising therefrom and some of its factual aspects, such as, for instance the $21,000 portion of the loan for his own benefit and the eighteen percent service charge. Accordingly, the court declared the deed and the lease of July 18, 1986 void. It also directed that respondent either pay off the mortgage or use other property to secure it. The court did credit respondent, however, with certain expenses that he had paid, in the amount of $11,000, to be offset by the rental payments made by the Joyces. The court found that "self-interest unmitigated by a residual sense of professional duty to the Joyces motivated this transaction" (Exhibit P-3 at 16).[8] It, thus, assessed punitive damages of $20,000 against respondent. The court also disallowed respondent's legal fees of $5,500. The court concluded, however, that ". . . at least at the commencement of this transaction Schofield was motivated by a genuine desire to help his clients" (Exhibit P-3 at 16).

* * *

At the conclusion of the DEC hearing, the panel found that respondent had engaged in a conflict of interest situation by entering into a business relationship with his clients without full disclosure of the circumstances and the pitfalls of the transaction and without advising them of the desirability of seeking

[8] Parts of the court's opinion have been excised by agreement between respondent and the presenter.

independent counsel. The panel also found that the terms of the transaction were not fair and reasonable to the Joyces and that respondent's legal fees had been excessive. The panel concluded that respondent had violated RPC 1.2(e), 1.5, 1.7(b), 1.8, 1.9, 2.1, 8.4(a) and 8.4(c).

CONCLUSION AND RECOMMENDATION

Upon a *de novo* review of the record, the Board is satisfied that the conclusions of the DEC in finding respondent guilty of unethical conduct are fully supported by clear and convincing evidence. The Board is unable to agree, however, that the record clearly and convincingly establishes that respondent overreached the Joyces. In similar fashion, the Board cannot find that respondent violated RPC 1.2(e), 1.5, 1.7(b), 1.9 and 2.1, as concluded by the DEC. It is unquestionable, however, that respondent's conduct violated RPC 1.8, 8.4(a) and 8.4(c).

* * *

Respondent's business relationship with the Joyces was fraught with improprieties from its inception. Having made a decision to entangle his business concerns with the Joyces', respondent was under the obligation to comply strictly with the protective measures imposed by the disciplinary rules. The provisions of RPC 1.8 are clear:

> (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless (1) the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner and terms that should have reasonably been understood by the client, (2) the client is advised of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent counsel of the client's choice on the transaction, and (3) the client consents in writing thereto.

Respondent vigorously argued that he was no longer the Joyces' attorney at the time of the transaction. According to his testimony, he unequivocally informed the Joyces that, if they were to enter into a business relationship, the attorney-client relationship had to be terminated; to this end, he had given them the name of an attorney with whom he had previously shared office space and had urged them to obtain that attorney's legal advice. The Joyces, in turn, denied having been so advised. What is undisputed, however, is that the Joyces never consulted with the attorney recommended by respondent or with any other attorney of their choice. It is also undisputed that respondent was aware of this fact prior to formalizing the business deal with the Joyces. Under these circumstances, whether respondent in fact counseled them to obtain legal representation is of little significance. Faced with the knowledge that the Joyces had not heeded his advice and faced further with the awareness that they were of a modest educational background and that they had faith, trust and confidence in him, respondent should have either insisted that they retain independent counsel or refused to proceed with the

transaction. In re Wolk, 82 N.J. 326 (1980); In re Hurd, 69 N.J. 316 (1976). The attorney's duty is not discharged by a "passing suggestion that the client consult a second attorney." In re Smyzer, 108 N.J. 47, 55 (1987). Instead of refusing to go forward until independent legal advice was obtained, however, respondent embarked on a course of action designed to protect not the interests of the Joyces, but his own. He contacted the attorney whom he had recommended to the Joyces and sought that attorney's advice on how to insulate himself from claims that he had failed to comply with the requirements of RPC 1.8(a). Indeed, that attorney testified that respondent had asked him "how can I protect myself?" (Exhibit D-2). Thereafter, respondent prepared a disclaimer and waiver provision (paragraph 29 of the contract of sale) that the Joyces either did not read or did not understand. Respondent overlooked the fact that the requirement of full disclosure and written consent by the client is not intended to be a mere formality. Because its purpose is to protect the client, not the attorney, it is never enough that the attorney simply go through the motions of preparing and submitting for the client's review legal language that escapes the client's comprehension. As the Court pointed out in In re Wolk, supra, 82 N.J. at 333, "an attorney cannot shield himself behind the glib recitation of disclosure the practical meaning of which [is] unknown to the client."

That respondent believed that he was not acting as the Joyces' attorney is irrelevant to the ethics violation. The fact remains

that the Joyces believed that he was their attorney and trusted that he would safeguard their interests throughout the entire transaction. "The fiduciary obligation of a lawyer applies to persons who, although not strictly clients, he has or should have reason to believe rely on him." In re Hurd, supra, 69 N.J. at 330 (citations omitted).

The conclusion is inescapable that respondent created for himself a serious conflict of interest situation by engaging in several sensitive transactions with the Joyces, where their interests were adverse, where the Joyces did not have the benefit of independent legal counsel and where full disclosures concerning all aspects of the transaction were not made.

Similarly, other aspects of the transaction smacked of impropriety. When respondent added $21,000 to the $19,000 loan, used that for his own benefit, with the Vincentown house as collateral, and did not disclose this crucial fact to the Joyces, his conduct was improper. He also acted unethically when he misrepresented to the lending institution that he owned the Vincentown house and that the Joyces paid him rent. Fortunately, the bank suffered no loss because respondent's income and other assets merited favorable consideration and because the loan was not actually granted until respondent had acquired title to the house. Respondent also acted improperly when he placed the house for sale at $139,900, without disclosing this price to the Joyces.

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The Board, however, is unable to agree with the DEC's conclusion that respondent's business dealings with the Joyces were colored with undertones of overreaching. A review of the list of expenses that respondent submitted to the Joyces, ante at 9-10, shows that all required expenses in connection with the property and their corresponding amounts appear reasonable,[9] including respondent's legal fees. It was respondent's testimony that, from January through March 1986, he worked 37.00 hours on the hospital lien matter and on the loan application process, including conferences with and personal visits to various lending institutions. Although the original itemization of services provided was no longer available, respondent submitted a reconstructed statement (Exhibit D-5). The Board's independent canvass of the record persuades it that the evidence does not clearly and convincingly establish that respondent's fee was so excessive as to evidence an intent to overreach the Joyces. But see In re Hinnant, 121 N.J. 395 (1990) (charging a contingent fee in a real estate transaction constituted overreaching); In re Hecker, 109 N.J. 539 (1988) (double billing at trial, charging for unnecessary services and for services on non-lawyers, and misrepresenting the work performed amounted to overreaching).

Neither is the Board able to conclude that the business dealings between respondent and the Joyces escalated to the level

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[9] Although Judge Wells' opinion makes reference to the fact that the Joyces had paid closing costs charged for the entire loan amount of $40,000, instead of only those prorated to a $19,000 loan, the record before the Board is insufficient to allow a similar conclusion.

of overreaching. Recapitulating the terms of the transaction, respondent was to obtain a $19,000 loan in his name to pay the required expenses; title to the house would be transferred to respondent; the Joyces would remain in the house, in exchange for $400 monthly rent for fifteen years; at the expiration of the term of the lease, after the Joyces had paid respondent $72,000 ($400 x 180 months = $72,000), title would be conveyed back to them with no further payments.

Reduced to its simplest terms, the transaction might give the impression that it was unconscionable. For it might be concluded, as did the court in the underlying civil action, that "[b]efore the sale to Schofield the Joyces owned an $85,000 property subject to a lien of about $5,000. After the sale they held a beneficial interest under the option to repurchase subject to a duty to pay $72,000, 14 and 1/2 times what they originally owed" (Exhibit P-3 at 13). It must not be ignored, however, that the Joyces had already been served with a writ of execution when they sought respondent's legal advice. Under those circumstances, a sale of the house appeared imminent, unless the Joyces could come up with enough cash to satisfy the entire $4,500 judgment. This was a clear impossibility: a loan from relatives, bankruptcy, a bank loan, one by one each of the alternatives explored had been either rejected or ruled out. In the face of their insolvency, the Joyces' realistic posture was not one of owners of a house subject to a dormant lien but, more properly, one of soon-to-be prior owners of a house that had to be sold to satisfy the outstanding

judgment levied against it. The outlook for the Joyces was, thus, gloomy: either pay off the judgment or lose possession of the house. They obstinately refused to consider the latter, while aware that they could not carry out the former. It is within this context that the fairness of the transaction -- and respondent's motives -- must be evaluated. Plainly put, the question becomes: what was it worth to the Joyces -- that would not be considered unconscionable -- to be able to remain in possession of the house, when installment payments to satisfy the judgment were out of the question, by their failure to honor a prior agreement with the judgment-creditor, and when bank loans were beyond the bounds of possibility, by their failure to maintain good credit? The answer is obvious: when viewed within the above context, respondent's conduct -- and the terms of the transaction -- cannot be deemed unconscionable. First, it is undeniable that, with or without respondent's involvement, the Joyces' position with respect to the house was about to undergo critical changes. Second, assuming that the Joyces had been able to obtain a $19,000 bank loan in their own names, if they had defaulted on those payments they would also have lost possession of the house by way of a foreclosure action. Third, the monthly amortization payments to the bank, with real estate taxes and insurance included, would have been close to the amount they paid respondent for rent, $400: $213 for the loan, $65 for the taxes and $38 for the insurance, for a total of $316. At the end of fifteen years, they would have paid $38,338.20 for the loan and a minimum of $18,540 for the taxes and insurance

(assuming, unrealistically, that those two rates would not have increased), for a total of $56,880. The $15,120 difference between $72,000 and $56,880 more or less represented the eighteen percent charge that the Joyces paid respondent to "service" the loan over a fifteen-year period ($912 per year or $76 per month).[10] It is true that respondent acted improperly in imposing a service charge, of which the Joyces, incidentally, were unaware. Arguably, the service charge represented respondent's only "benefit of the bargain" in the transaction, for all his "troubles." For instance, the Joyces could have defaulted on the payments to respondent, in which case he would have had to pay the monthly installments himself. The answer to that is that respondent could then have sold the house to pay off the loan; but considering the house's condition, its location in the Pinelands and the declining real estate market, what if the house did not sell within a reasonable period of time or what if it did not sell at all?

Clearly, there were benefits and perils to both parties. For example, the Joyces' untenable situation prior to the transaction was resolved by their possession and enjoyment of an improved house for fifteen years, at the end of which they would regain title by being credited with the rental payments. On the other hand, their possession -- and title -- would be threatened if respondent defaulted on the loan obligations or if they defaulted on the rental payments. Because, however, the Joyces retained a

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[10] For some unexplained reason, the record lists the monthly amount of service charge as $76, instead of $84, which is the actual difference between $400 and $316.

beneficial interest on the property, they were not totally without a remedy.

Similarly, there were corresponding advantages and risks to respondent. For instance, one of the conditions of the transaction was that title to the property be transferred to respondent. His position as titleholder, however, was intended to be a protective measure in the event that the Joyces did not pay him rent, whereupon he would become saddled with the obligation to repay the bank loan as well as the real estate taxes and the insurance premiums.

After conducting a balancing test, the Board concludes that the transaction was not so lopsided as to render it unconscionable; that it served to suit the Joyces' urgent needs; that respondent's motives were marked by his genuine desire to assist the Joyces; and that, although it is true that the Joyces' interests might have been jeopardized with the occurrence of certain events, those consequences were not contemplated or foreseen by respondent.

* * *

There remains the issue of appropriate discipline. In cases involving conflict of interest situations where the attorney has failed to recognize his/her obligation to the client, the discipline imposed has ranged from a public reprimand to disbarment. See In re Wolk, 82 N.J. 326 (1980) (where the attorney was disbarred after he counseled a widowed client to make a hopeless investment in a property in which the attorney held an

interest. The attorney had failed to disclose this critical information to the client, including a foreclosure and sheriff's sale of the property); In re Harris, 115 N.J. 181 (1989) (where the attorney was reciprocally suspended in New Jersey for a period of two years for inducing a long-standing client to lend $55,000 to another client, of whom the attorney was a judgment-creditor, without disclosing to the client-investor the risky circumstances concerning the transaction); In re Humen, 123 N.J. 289 (1991) (where the attorney was suspended for two years after he created several serious conflict of interest situations by entangling his business concerns with those of his client, who was also a long-standing friend); In re Hurd, 69 N.J. 316 (1976)(where the attorney received a three-month suspension for representing his sister in an unconscionable transaction with an octogenarian friend of respondent's family, whereby title to the friend's house was conveyed to the sister in exchange for a $2,000 loan to pay outstanding real estate taxes and water charges on the property); and In re Loring, 62 N.J. 336 (1973)(where the attorney received a public reprimand for, among other things, creating a conflict of interest situation by representing clients at a closing of title while pressing an adverse lien, on his own behalf, on the sale proceeds).

Here, respondent's conduct does not rise to the degree of seriousness that characterized the offenses in Wolk, Harris, Humen and Hurd and, as such, is not deserving of disbarment or a term of suspension. Moreover, numerous compelling mitigating circumstances

militate against the imposition of like sanctions: (1) respondent's good motives in his business dealings with the Joyces; (2) the ineffective advice rendered by the attorney with whom he consulted about how to terminate his professional relationship with the Joyces; (3) the absence of any financial injury to the Joyces (quite the contrary, they benefitted from the underlying civil suit by receiving a windfall of $20,000, represented by a punitive damages award); (4) the fact that the Joyces, albeit uneducated, were not helpless, innocent people who trusted respondent blindly for financial advice, (5) the testimony of several clients who attested to respondent's good character, integrity and reputation for veracity; (6) the aberrational nature of respondent's actions and (7) the fact that respondent has suffered considerable economic and emotional distress from his misdeeds.

Upon consideration of the relevant facts, the Board majority is persuaded that a public reprimand constitutes sufficient discipline for respondent's wrongs. The Board majority so recommends. One member is of the view that respondent's misconduct was tempered by his altruistic motives and, accordingly, would impose only a private reprimand. Two members did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 11/12/1991

By: [signature]
Raymond R. Trombadore
Chair
Disciplinary Review Board