SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-154
District Docket No. XIV-2012-0129E

IN THE MATTER OF	:
CHRISTINE LIPTAK	:
AN ATTORNEY AT LAW	:

Decision

Argued: October 17, 2013

Decided: December 3, 2013

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

Henry E. Klingeman appeared on behalf of respondent.

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

This matter was before us pursuant to R. 1:20-6(c)(1). That rule provides that the pleadings and a statement of the procedural history of the matter may be filed directly with us, without a hearing, if the pleadings do not raise genuine disputes of material fact, respondent does not request an opportunity to be heard in mitigation, and the presenter does not request an opportunity to present aggravating circumstances.

The two-count complaint charged respondent with having violated RPC 1.7(a)(2) (conflict of interest), RPC 1.15(a) (failure to safeguard funds), RPC 1.15(d) and R. 1:21-6 (recordkeeping violations), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

By letter dated May 6, 2013, the Office of Attorney Ethics (OAE) informed us that respondent admitted the allegations of the complaint, and would waive a hearing on mitigation if we considered her certification. The OAE did not object to our consideration of the mitigating factors set forth in respondent's certification and pointed out that there were "no aggravating circumstances nor egregious circumstances or serious economic injury to the parties involved." The OAE, therefore, did not request an ethics hearing.

At oral argument before us, the OAE withdrew the charged violations of RPC 1.15(a) and RPC 8.4(c), as it related to statements made by respondent in a HUD-1 statement. The presenter informed us, that upon receipt of respondent's certification, it became clear that respondent had not made misrepresentations on the HUD-1 statement. We, therefore, do not address those charges.

For the reasons expressed below, we find that a reprimand is the appropriate discipline for respondent's transgressions.

Respondent was admitted to the New Jersey bar in 1992. At the relevant time, she maintained an office in Montville, New Jersey. She has no history of discipline. Respondent currently resides in Mebane, North Carolina. According to her counsel, respondent is not practicing law and does not intend to practice law, or to move back to New Jersey.

The New Jersey Lawyers' Fund for Client Protection report shows that respondent has been retired since 2009, and was intermittently retired from April 2, 2001 to June 2, 2001 and in 2004.

Count one of the ethics complaint relates to the OAE's audit of respondent's trust and business accounts for the period from November 1, 2006 through April 30, 2007. According to the complaint, the audit disclosed the following recordkeeping improprieties:

A. Failure to maintain an IOLTA trust account [*R. 1:28A*];
B. Client ledger cards not maintained [*R.1:21-6(c)(1)(B)*];
C. No trust receipts and disbursements journals [*R.1:21-6(C)(1)(A)*];
D. Failure to perform monthly three-way reconciliations of trust account [*R.1:21-6(c)(1)(H)*];
E. Insufficient detail on trust account deposit slips and checks [*R.1:21-6(c)(1)(A)*];
F. Improper business account designation [R.1:21-6(a)(2)];

G. Failure to deposit all earned legal fees into the business account [*R.1:21-6(a)(2)*];
H. Funds unrelated to the practice of law deposited into trust account [*RPC 1.15(a)*];
I. Trust and business account records not maintained for seven years [*R.1:21-6(c)(1)*].

[C¶2.][1]

The complaint alleged that these deficiencies constitute a failure to comply with recordkeeping requirements (RPC 1.15(d) and R.1:21-6).

Count two alleged that respondent's husband, Gregory Swanson, formed and operated Phoenix Investment Group, LLC (Phoenix), and was its "sole owner and member." Phoenix was formed to buy, renovate, and resell distressed properties.

Richard Pavoni was the owner of RPNV, LLC (RPNV), a company involved in Phoenix's real estate ventures. Thomas Wilson, the owner of TAN Developing, invested in Phoenix through RPNV.

Swanson and Pavoni engaged in joint ventures to renovate and sell properties. Pavoni did not invest his personal funds. Instead, he obtained investors for Phoenix. Wilson was one such investor. Pavoni received a portion of the investors' profits.

[1] C refers to the formal ethics complaint, dated March 13, 2013.

On January 9, 2006, Swanson's mother, Carolyn Swanson (Carolyn), obtained a $200,000 loan from RPNV. The loan was secured by a mortgage on her property in Montville, New Jersey. Respondent witnessed Carolyn's signature on the mortgage note. The complaint alleged that the "$200,000 was used to fund unspecified real estate ventures for Mr. Swanson and Mr. Wilson."

On January 16, 2007, Carolyn refinanced, presumably the existing mortgage on her Montville property, for $484,000. Respondent represented Carolyn and acted as the settlement agent for the closing. As seen below, respondent did not receive the funds for the closing until six days after the refinancing.

In connection with the closing, respondent had written a December 20, 2006 "source of funds" letter to Hanover Funding, the mortgage broker. The letter represented that Carolyn was the sole owner and member of Oakland Avenue Investors, LLC (Oakland) and, that as of that date, respondent was holding $52,000 in her trust account from the sale of Oakland's property located in Irvington, New Jersey. However, the $52,000 that had been deposited into respondent's trust account, on December 20, 2006, and transferred out of the trust account later that day, came from TAN Developing. Therefore, the letter was false in that regard and also because, on December 20, 2006, respondent had

only $43,514.04 in her trust account. The balance in respondent's trust account remained below $52,000 until the January 22, 2007 refinancing.

The funding for the refinancing came from GMAC via two January 22, 2007 wire transfers into respondent's trust account: one for $486,078.50, the other for $61,700. Between January 22 and February 12, 2007, respondent made eleven disbursements, which left a balance of $512.64 in her trust account.[2]

The complaint, thus, charged respondent with having violated RPC 8.4(c) because the December 20, 2006 letter to Hanover Funding contained a false statement.

The complaint further alleged that respondent's

> representation of Ms. Swanson in the January 16, 2007 refinance closing in which funds were obtained to invest in the business ventures of respondent's husband Mr. Swanson and to satisfy a mortgage held by Mr. Pavoni's company, RPNV, and in which funds from Mr. Wilsons's TAN Developing were used, constituted a conflict of interest in violation of RPC 1.7(a)(2).
>
> [C¶2.]

Respondent's certification in mitigation, dated April 26, 2013, stated that she met Swanson through a partner of the small

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[2] The complaint lists the date for the refinancing as January 16, 2007 even though it states that GMAC wire-transferred the funds for it on January 22, 2007.

law firm in which she worked. In 1996, after Swanson was diagnosed and successfully treated for stage three melanoma, they married and, thereafter, had a child. At some point not mentioned in the certification, respondent stopped working.

Respondent believed that Swanson's cancer crisis led him to "drink more and more." The problem escalated in 1999 after the birth of their son. Swanson gambled away rent proceeds that were earmarked for numerous mortgages on rental properties that they jointly owned. Respondent, therefore, went back to work for the same law firm. In 2001, Swanson pleaded guilty to mortgage fraud and, in 2006, was sentenced to probation.

Although Swanson never stopped drinking, he began attending Alcoholics Anonymous and received treatment from a psychiatrist. He began putting his real estate career back together. As things began improving, they decided to have another child. Swanson convinced respondent to quit her job, to conduct closings for him from their home, and to continue to care for their family. She quit her job in October 2003.

Swanson, again, began drinking heavily and staying out late. On the day their second son was born, in 2004, respondent discovered that Swanson was having an affair. That year was "a blur" to respondent. In early 2005, when respondent could no longer handle the situation, she consulted an attorney.

Respondent and Swanson then separated. Swanson moved out and began living nearby with a "Brazilian go go dancer who spoke no English." Swanson's living arrangements began having a negative impact on their older son.

Respondent consulted with her attorney about the troubling visitation situation. At that time, she was also caring for her eighty-seven year old father and eighty year old mother, who was suffering from Alzheimers. According to respondent

> I was juggling work, kids, family issues, separation and again, trying to maintain normalcy in a situation that was out of control. Greg came to me, confessed the "error of his ways" and said he would make things right with me and the boys. He needed to get his girlfriend back to Brazil.
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> [RC¶9.][3]

Respondent was overwhelmed by her problems and was concerned that Swanson would disappear with their boys, perhaps to Brazil. Later, after Swanson seemed to be "back on the right track," they reconciled. Respondent again quit her job to care for her immediate family and for her mother whose situation had worsened. Her mother passed away in August 2006.[4]

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[3] RC refers to respondent's April 26, 2103 certification.

[4] At oral argument before us, respondent's counsel related that respondent's father had also recently passed away.

From 2006 to 2010, Swanson began re-building his real estate business. During respondent's and Swanson's separation, Swanson had forged both good and bad business relationships. Respondent continued to handle his real estate closings.

Some of the properties that Swanson had purchased were funded, "apparently" with Pavoni's and Wilson's help. The properties were not selling. Pavoni and his associates were not happy and sought repayment of their investments. According to respondent, Pavoni and his associates "were not the right kind of investors." Swanson thus asked his mother to obtain a mortgage on her house, in which respondent and Swanson lived. Carolyn did not receive any money from that mortgage. Swanson had told respondent that the mortgage "was necessary to show these 'investors' that the money was secure. He said the money was cross-collateralized on another property that he owned."

When the housing problems started, Swanson had trouble selling the houses. Because Pavoni also experienced financial problems, his phone calls to Swanson were "endless." It became clear to respondent that Swanson felt that he was in danger. He was receiving pressure from various business associates and, therefore, asked his mother to refinance her Montville house in order to keep peace with his associates. The refinancing

involved a first and second mortgage. GMAC wired the funds into respondent's trust account.

In June 2008, one or several of Swanson's associates threatened him with physical harm. Because he believed that the danger was "real and present," he directed respondent to take their children, his sister and his mother to North Carolina. He told her it was unsafe for her to return to New Jersey. She, therefore, moved, found a job, and enrolled the children in school. Swanson eventually moved to North Carolina, and turned to real estate "with the right people," and things began to improve. Respondent continued to work to support them even though, in 2010, she had been diagnosed with thyroid cancer.

In August 2011, Swanson suffered a massive seizure. Following surgery, he was diagnosed with Stage Four "Glioblastoma brain cancer." Almost one year after his diagnosis, he died "a horrific death." Respondent was so conflicted "emotionally and mentally" about his death and their relationship that she regularly sees a therapist.

Shortly after Swanson's death, respondent was diagnosed with colitis and, in February of 2013, was informed that her thyroid cancer or another form of it may have returned.

Respondent admitted that there were things that she should not have done, and would not have done, except for Swanson's

controlling nature and the circumstances that his actions had created. She admitted, "regrettably," that she now has some peace as Swanson can no longer put her in any more troubling situations. She wants to put the past behind and lead a normal life. She urges us to help her move forward and states that she does not presently practice law, does not intend to do so in the future, and "would gratefully appreciate [our] leniency in rendering a decision in this matter."

At oral argument before us, respondent's counsel emphasized that respondent apologized for her absence, but was unable to appear as she is a single mother and works full-time. She does not contest the charges against her but seeks leniency for the circumstances that were beyond her control.

Following a full review of the record, we are satisfied that respondent's conduct violated RPC 8.4(c).

As to count one, respondent is guilty of recordkeeping deficiencies, a violation of RPC 1.15(d) and R. 1:21-6. With respect to count two, respondent's misrepresentations to Hanover Funding, about the source of the funds she was holding in her trust account, is a violation of RPC 8.4(c).

Respondent was also charged with having violated RPC 1.7(a)(2), which 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 "(2) 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 a personal interest of the lawyer."

Respondent's representation of Carolyn on the refinancing could be viewed as a conflict of interest because those funds were to be used for Swanson's benefit, which would also have been a benefit to respondent. This benefit would constitute "a personal interest of the lawyer." However, the complaint neither alleged that respondent failed to make full disclosure to Carolyn that the representation could be limited by her own interests nor that Carolyn failed to give her informed written consent to the representation. Absent these allegations in the complaint, we cannot find, by clear and convincing evidence, that respondent violated of RPC 1.7(a)(2), even though she admitted violating this rule.

The only issue left for our determination is the appropriate quantum of discipline for respondent's violations of RPC 1.15(d), R. 1:21-6, and RPC 8.4(c).

Recordkeeping irregularities ordinarily are met with an admonition, so long as they have not caused a negligent misappropriation of clients' funds. See, e.g., In the Matter of

Thomas F. Flynn, III, DRB 08-359 (February 20, 2009) (for extended periods of time, attorney left in his trust account unidentified funds, failed to satisfy liens, allowed checks to remain outstanding, and failed to perform one of the steps of the reconciliation process; no prior discipline); In the Matter of Jeff E. Thakker, DRB 04-258 (October 7, 2004) (attorney failed to maintain a trust account in a New Jersey banking institution); In the Matter of Arthur G. D'Alessandro, DRB 01-247 (June 17, 2002) (numerous recordkeeping deficiencies); In the Matter of Marc D'Arienzo, DRB 00-101 (June 29, 2001) (failure to use trust account and to maintain required receipts and disbursements journals, as well as client ledger cards); and In the Matter of Christopher J. O'Rourke, DRB 00-069 (December 7, 2000) (attorney did not keep receipts and disbursements journals, or a separate ledger book for all trust account transactions).

The discipline imposed for misrepresentations to third parties is generally a reprimand. See, e.g., In re Davis, 194 N.J. 555 (2007) (motion for reciprocal discipline; attorney practiced law while ineligible and misrepresented his status to the court, his adversary, and in filings with disciplinary authorities; mitigating factors were he had no prior discipline, he represented only one Pennsylvania client, he was remorseful,

and he cooperated with ethics authorities in both Pennsylvania and New Jersey); In re Lowenstein, 190 N.J. 58 (2007) (attorney failed to notify an insurance company of the existence of a lien that had to be satisfied out of the settlement proceeds; the attorney's intent was to avoid the satisfaction of the lien); and In re Agrait, 171 N.J. 1 (2002) (despite being obligated to escrow a $16,000 deposit in a real estate transaction, the attorney failed to collect it but caused it to be listed on the RESPA as a deposit; the attorney also failed to disclose a prohibited second mortgage to the lender).

A censure was imposed in a matter involving significantly more serious circumstances. In re Frohling, 205 N.J. 6 (2011) (in three "flip" real estate transactions, the attorney falsely certified on the settlement statements that he had received the necessary funds from the buyers and that all funds had been disbursed as represented on the statements; the attorney's misrepresentations, recklessness, and abdication of his duties as closing agent facilitated fraudulent transactions; the attorney also engaged in conflicts of interest by representing both parties in the transactions and was found guilty of gross neglect and failure to supervise a nonlawyer employee; prior reprimand).

Clearly, respondent's misconduct is not as serious as Frohling's. In addition, we find that the compelling mitigating factors here - respondent's and her family's serious illnesses, marital problems, financial problems resulting from her husband's questionable dealings, and lack of a disciplinary record - warrant discipline no greater than a reprimand.

Member Zmirich 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
Bonnie C. Frost, Chair

By: Isabel Frank
Isabel Frank
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Christine Liptak
Docket No. DRB 13-154

Argued: October 17, 2013

Decided: December 3, 2013

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Gallipoli			X			
Yamner			X			
Zmirich						X
Total:			6			1

Isabel Frank
Acting Chief Counsel