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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-479

IN THE MATTER OF

JOSEPH PATERNO, III

AN ATTORNEY AT LAW

Decision

Argued: April 15, 1999

Decided: August 18, 1999

Thomas A. Zelante appeared on behalf of the District X Ethics Committee.

Respondent appeared pro se.

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

This matter was before the Board based on a recommendation for an admonition filed by the District X Ethics Committee ("DEC"), which the Board determined to bring on for a hearing. The one-count complaint charged respondent with a violation of RPC 8.4, presumably (c).

Respondent was admitted to the New Jersey bar in 1991. At the relevant times he maintained an office in Montville, New Jersey. Respondent currently practices in Kinnelon, New Jersey. He has no history of discipline.

Avinoam Ofri, the grievant, is a real estate broker and owner of Fawn Realty Co., in New York. He was hired by Antoinette Charsky to obtain a tenant for her store. Respondent did not know Charsky at that time, but later became her attorney. Ofri secured a tenant for Charsky's store and earned a commission of $12,000. Charsky, however, failed to pay Ofri the commission. As a result, Ofri pursued the matter in the New York courts, acting pro se.

In 1993 Ofri obtained a judgment against Charsky for $16,040. However, when Ofri attempted to collect on the judgment, he discovered that Charsky had disappeared. Ofri then hired a private investigator, who located Charsky in Passaic County, New Jersey. When Ofri contacted the Passaic County Sheriff's Office to try to collect on the New York judgment, he was informed that he needed a New Jersey judgment.

In or around May 1996 Ofri pursued the matter in New Jersey by filing a complaint against Charsky. Although not formally retained, respondent assisted Charsky in the matter. He wrote to Ofri in July 1996, advising him that Charsky had retained his services; that Ofri's complaint was invalid because it violated R. 1:21-1(c), which precluded business entities, other than sole proprietorships, from appearing or filing any papers in any action in any court, except through an attorney authorized to practice in the state; that the underlying New York judgment was subject to collateral attack in New Jersey; and that, because

Charsky had no assets or income, it would not be a prudent business decision for his corporation to incur significant legal fees in attempting to pursue Charsky.

Ofri's business, Fawn Realty Co., was a sole proprietorship. Therefore, Ofri could pursue the matter pro se. On October 2, 1996 Ofri obtained a judgment against Charsky in the amount of $17,982.97, including interest and costs. On November 13, 1996 the judgment was recorded as a lien against Charsky's residence in New Jersey.

When Ofri attempted to collect on the judgment, he discovered that the property had been transferred from Antoinette Brozena (Charsky's maiden name) to EE & ARE Ventures, Inc., a New York corporation. The corporation was solely owned by Charsky/Brozena. The deed, which was prepared by respondent, was dated October 4, 1996, and received for filing on October 23, 1996. The deed was dated two days after Ofri's judgment. It recited consideration in the amount of $1.00.

As a result of the name change on the deed and the transfer to the "dummy" corporation, Ofri's attempt to collect against the property was frustrated. Thereafter, Ofri filed a motion to amend the caption to include the name Brozena. However, the court denied the motion because Ofri had failed to file the motion within ten days of the judgment, as required by court rule.

The court summarized the proceedings before it as follows:

> [O]n May 8, 1996, the plaintiff [Fawn Realty Co.] moved to enforce the judgment against Charsky in this state, having learned that she had a residence in New Jersey. In October of '96, the matter came before me, wherein Antoinette Charsky was adjudged delinquent in the amount of $17,982.97, including interest and costs, and a final judgment was entered against her.

> Allegedly thereafter Charsky conveyed the property and investments located at 187 Lafayette Street, Passaic, to a dummy corporation under her married name, Antoinette Brozena. Although defendant moved to vacate the judgment, I denied the same. Upon information and belief, Fawn Realty suggested -- is [sic] that defendant has already or is about to transfer her assets from newly formed dummy corporations under her married name for the purpose of evading collection of the judgment. So currently plaintiff moves for an order to amend the caption to include Mrs. Charsky's married name, Brozena.
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> * * *
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> On the other hand, I think Ms. Charsky, alias Ms. Brozena, is trying everything legal and illegal to avoid her obligations under this judgment to the plaintiff. I think she is -- her actions tend to be a fraud on the Court. Certainly, she's using false names and false entities in an effort to avoid paying what she's legally obligated to pay.
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> [Exhibit E]

Charsky filed a motion to vacate the judgment, which was denied by order dated November 22, 1996.

Afterwards, Ofri filed a motion to enforce litigants' rights. When Charsky failed to appear, the court signed a warrant for her arrest. Charsky, however, was able to avoid arrest, even though she was apparently present at her Passaic home. Thereafter, Ofri filed an ethics grievance against respondent for assisting Charsky.

Respondent admitted knowing that, when he prepared the deed transferring the property to the dummy corporation, the judgment had been entered only days earlier. According to respondent, he believed, however, that Charsky had no significant assets, other

than the house in Passaic, and that the house was fully mortgaged. He conceded that he did not conduct an independent title search.

Respondent stated that he was not disputing the facts, but wanted the DEC to know about his intentions in drafting the conveyance and about his good character. He denied participating in a sham transaction, pointing out that he did not recite a fraudulent consideration and did not predate the deed. He suggested that, if he had intended to prevent Ofri from collecting on the judgment, he could have taken other actions to accomplish that end, which he chose not to do. Respondent also asserted that, early in his career as an attorney, he had faced a situation where, rather than work for a law firm that seemed to be acting unethically, he had been forced, because of job market conditions, to perform non-legal jobs for which he was overqualified. In mitigation, respondent testified that, in his current sole practice, he works very hard for his clients, returns their phone calls and does a lot of "hand- holding" to get them through tough times:

> The case that you're representing them on is the most difficult or perhaps the most monumental thing going on in their life at the time, I realize that. I don't get a big head about that, but I realize the significance of that and I try to do my best for people. I try to help them. I try to just hold their hands essentially.
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> [T46-47[1]]

Respondent also testified that Charsky needed help at the time; she was elderly, frail and had mentioned suicide. According to respondent, the judgment against her had been the

[1] T denotes the transcript of the May 28, 1998 DEC hearing.

most devastating event of her life. Respondent justified his conduct by stating that, because there was a "grey area" in this case, he perhaps had erred on the side of protecting his client.

Respondent also contended that it was not his idea to transfer the title and that he believed that doing so would not accomplish any results favorable to Charsky. He explained, though, that Charsky had cried and begged him to do it. He, therefore, had agreed to draft the deed, but not before trying "to talk Charsky out of it." Respondent stated that he was not trying to "get away with anything" when he drafted the deed and that he knew that it would be traced back to him. Respondent reasoned that, because the house was mortgaged in its entirety, Charsky had no equity in it and, therefore, it would serve no purpose to foreclose on the house.

According to respondent, he did not request or arrange for Charsky's presence at the DEC hearing because he believed that she would have been too upset if she knew about the problems she had caused him. He stated that Charsky viewed him as a grandson. He further observed that Charsky was a very proud woman, who did not want to declare bankruptcy because she did not want her financial problems disclosed. He believed that, if she knew that he had given to the DEC such a full disclosure of her affairs, she would have been humiliated.

The presenter noted that respondent had replied immediately to his request for information and had been completely forthcoming, "even matters that I didn't ask him." T53.

* * *

The DEC determined that respondent had violated RPC 8.4(c) by preparing a deed transferring title to property owned by his client, Antoinette Charsky, to a "dummy" New York corporation that she also owned, in an attempt to avoid the execution of a judgment against her. The DEC concluded that respondent's conduct violated N.J.S.A. 25:2-27, which states, in part:

> a. A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

The DEC also cited Advisory Committee Opinion No. 125, which states that it is unethical for an attorney to participate in a transaction by transferring asset of value without consideration, if such transfer would leave the transferor insolvent. The opinion referred to In re DePamphiles, 30 N.J. 470 (1959), where two attorneys engaged in unethical conduct by "recommending a transfer of properties in an attempt to defraud creditors and to file bankruptcy proceedings and in [their] participation in the actual transfer of properties. . . ."

The DEC determined that an admonition was warranted, weighing respondent's conduct against the following mitigating factors: respondent's cooperation with the DEC investigator and the ethics process; his candor, remorse and recognition of wrongdoing; the credibility of his testimony; and the fact that, unlike the DePamphiles matter, respondent was

acting at the direction of his client. The DEC also considered that respondent assisted his client in other legal matters for no compensation. The DEC concluded, however, that respondent had failed to advise his client against transferring the property and that this conduct was unethical.

* * *

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

It is not clear, though, that respondent's conduct violated N.J.S.A. 25:2-27 or ACPE Opinion No. 125. There is no clear and convincing evidence in the record that Charsky was actually insolvent at the time of the transfer or became insolvent as a result of the transfer, even though the record alludes to the possibility that Charsky's New York corporation filed for bankruptcy. The transfer made here was in essence to herself, as the sole shareholder of the corporation, and there was no proof, other than respondent's testimony which was based on hearsay, that Charsky may not have had any equity in the house. Respondent's conduct in drafting the deed was, nevertheless, a violation of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) for his role in assisting his client to avoid the execution of the judgment.

A three-month suspension was imposed in In re Kernan, 118 N.J. 301 (1990), where the attorney concealed a conveyance of real property in his own divorce proceeding and filed a false certification by failing to amend the certification of his assets. Here, respondent's conduct was not as serious as in Kernan. He did not stand to benefit personally from the conduct. Moreover, respondent testified that he acted knowing that a court would find the transfer to be a sham and that the transfer would serve only to delay, but not defeat, the execution of the judgment. However, this admission, coupled with respondent's "no harm, no foul" attitude, highlights his failure to recognize that his conduct was wrong and his failure to understand the basic ethics principles by which he should be guided.

In consideration of respondent's otherwise unblemished record, however, and of the absence of self-benefit, the Board unanimously voted to impose only a reprimand. One member did not participate.

The Board further determined to require respondent to show proof that he attended twelve hours of ethics courses offered through ICLE. Said courses are to be taken within six months of the date of this decision.

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

Dated: 8/18/95

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Joseph Paterno, III
Docket No. DRB 98-479

Argued: April 15, 1999

Decided: August 18, 1999

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			x				
Boylan							x
Brody			x				
Cole			x				
Lolla			x				
Maudsley			x				
Peterson			x				
Schwartz			x				
Total:			7				1

By Isabel Frank 8/19/99
Robyn M. Hill
Chief Counsel