SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-375

IN THE MATTER OF :
JOHN M. POWER :
AN ATTORNEY AT LAW :

Decision

Argued: November 19, 1998

Decided: May 13, 1999

Paul R. Nusbaum appeared on behalf of the District X Ethics Committee.

Michael P. Ambrosio appeared on behalf of respondent.

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 discipline filed by Special Master Clifford W. Starrett. This matter was previously before the Board on appeal, following the dismissal of the grievance by the District VC Ethics Committee. On June 26, 1996 the Board granted the appeal and remanded the matter to the District X Ethics Committee ("DEC") for an investigation and a hearing. The four-count complaint charged respondent with violations of *RPC* 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) in four instances.

Respondent was admitted to the New Jersey bar in 1992. He has no prior disciplinary history.

* * *

This matter presents an engaging tale involving a power struggle among the principals of a small corporation of which respondent was general counsel, director, secretary and shareholder. The complaint alleged that respondent violated *RPC* 8.4(c) in the following manner:

- He issued shares of stock to himself and others without corporate authority.
- He improperly deposited the proceeds of stock sales into his trust account, making preferential payments to a principal of the corporation and select creditors, at a time when the corporation was laden with debt.
- Pursuant to a purported stock option agreement, he transferred stock to other stockholders, to officers of the corporation or to the board of directors, without notice to the transferor, in order to wrest voting control from the transferor to himself and another.
- He conspired to gain control of the corporation and to increase his stock ownership by dishonest and deceitful methods and engaged in a pattern of dishonesty, fraud and deceit.

In 1992, respondent was retained as general counsel of 21st Century Limited Productions, Inc. ("the corporation"), a corporation formed in 1991. According to the corporation's private stock offering disclosure statement, the corporation was formed

> for the purpose of organizing and promoting the 21st CENTURY LIMITED™, a traveling world fair/exposition . . . . A major attraction will be

> a thirty-four (34) car long exhibition train carrying in ten special historical exhibit cars, hundreds of original inventions, and other artifacts which represent significant achievements during the 20th Century. In addition, a group of major leading corporations will share their Vision of the 21st Century in individual on-site exhibit buildings.
>
> [Exhibit E-4]

The principals of the corporation had previously exhibited the "American Freedom Train" to celebrate the nation's bicentennial. As that venture was successful, the principals sought to replicate the tour. The major stockholder (110 shares), president and chief executive officer was Ross E. Rowland, the grievant in this mater. Ralph A. Weisinger was a minority stockholder (forty shares), vice president and treasurer. The board of directors comprised five individuals, including Rowland and Weisinger. There were more than fifty shareholders, most of whom were friends of Rowland. The stock was not publicly traded.

In March 1992, respondent bought two shares at $10,000 each and entered into a stock option agreement to purchase six additional shares at that price. In October 1992 respondent bought two additional shares. During the second quarter of 1992, respondent was elected to the board of directors and as the corporation's secretary.

In order to accomplish its objectives, the corporation sought to obtain seven corporate sponsors to provide $7,000,000 each for expenses, such as the preparation of the exhibits. The corporation used much of the $500,000 generated by the initial sale of stock to prepare presentation materials designed to attract corporate sponsors. The corporation expected to return the shareholders' investment with the profits realized from the difference between the

revenues derived from ticket sales and the touring costs of the exhibit. Rowland anticipated $150,000,000 in pre-tax profits over a four-year period.

Although the initial price of each share had been $10,000, when the corporation issued a private placement offer in July 1992, the price of each share was increased to $25,000. This offer was strictly limited to twenty shares of stock, sixteen of which were sold.

In July 1991 the corporation signed a marketing agreement with Robert Prazmark of 21st Century Marketing Group. Under the agreement, Prazmark was to obtain sponsors for the corporation. In July 1992 Rowland discharged Prazmark and John J. MacDonald, the corporation's chief operating officer, both of whom subsequently sued the corporation. Respondent's firm defended the corporation in both lawsuits.

The corporation had obtained $750,000 of a $7,000,000 commitment from the Chrysler corporation. From July 1992 until July 1993, the corporation performed its own marketing, but did not obtain additional sponsors. Consequently, Rowland proposed hiring a marketing consultant, Peter Osgood of Osgood Global Group. Osgood made a presentation to the corporation's board of directors in July 1993. Although Rowland and another director, James Tuck, were in favor of the proposal, respondent and Weisinger were opposed to it. The fifth director, John Whitehead, was ambivalent. As a result, the board voted to create a due diligence committee, consisting of respondent, Weisinger and Whitehead.

After hiring a firm to investigate Osgood and two of his principals, the committee issued a report recommending against retaining Osgood. Because Rowland had searched for a marketing consultant for five months and believed that Osgood's proposal was the best available, he felt strongly that the board should hire Osgood. Respondent claimed that, when Prazmark was the corporation's marketing consultant, Rowland entered into a "secret" contract by which Prazmark agreed to pay Rowland a "kickback" of five percent of the fees payable to him by the corporation. According to respondent, he was concerned that Rowland had made a similar arrangement with Osgood.

By then it was apparent that the dissention among the members of the board of directors was escalating into a power war. Indeed, Rowland concluded that, because management could not resolve the marketing consultant issue, respondent and Weisinger should be replaced as directors. Toward that purpose, Rowland called a special meeting of the stockholders for September 15, 1993. Rowland asked respondent, as corporate secretary, for a list of current stockholders. Respondent delayed supplying the list. Rowland agreed to pick up the list from respondent's office on September 10, 1993. When Weisinger learned from respondent that Rowland had arranged to go to respondent's office, Weisinger arranged for a psychological "intervention" targeting Rowland.[1] Weisinger arranged for the following individuals to be present at respondent's office when Rowland arrived:

[1] According to respondent, an intervention is a procedure in which those closest to an individual who appears to need psychological assistance point out instances of inappropriate behavior and convince that person to obtain treatment. In December 1990 Rowland had been treated for alcoholism at Clearbrook, a treatment facility.

respondent, Weisinger, Gene Middleton (Weisinger's brother-in-law, who was connected with Clearbrook), two shareholders – Anthony Corbett and Craig Burroughs – and an outside corporate contractor, Roger Whyte.

At this "intervention," respondent informed Rowland that he would give him the shareholder list only after Rowland listened to each individual's presentation of their opinions of the future of the corporation. Rowland listened to the criticism of his corporate leadership, responding only that there was strong disagreement over the direction of the corporation and that all were welcome to address this issue with the shareholders at the special meeting. Rowland also noted that Middleton had violated Rowland's right to confidentiality, presumably referring to Middleton's role with Clearbrook. Even respondent agreed, at the ethics hearing, that Rowland had maintained complete self-control during this meeting and had patiently listened to the discussion of his alleged inappropriate behavior.

Later that day, September 10, 1993, after discussing the matter with an attorney from an independent law firm, Rowland "telefaxed" a letter to respondent firing him as general counsel and instructing him to take no further action on behalf of the corporation.

Meanwhile, on September 13, 1993, respondent and Weisinger consulted an independent attorney about a prior stock option agreement between Rowland and Weisinger, signed in January 1991. Specifically, Rowland had granted Weisinger the option to buy Rowland's shares in the corporation for $1 per share. The option could be exercised within a twenty-year period. Under the agreement, Rowland would retain the right to receive the

income and/or dividends derived from those shares. According to Rowland, the genesis of that agreement was as follows. When he was discharged from Clearbrook, he owed about $1,000,000 to twenty creditors, including the Internal Revenue Service. Because Weisinger was concerned that one of Rowland's creditors would levy on the corporate stock, Weisinger devised the agreement to permit him to obtain Rowland's voting rights in the corporation if such an event took place. Rowland asserted, however, that, because he had reached payment agreements with all of his creditors by the end of 1991, Weisinger had orally agreed to destroy the stock option agreement. Rowland believed that it had been destroyed.

Although Weisinger did not testify at the ethics hearing, he had apparently obtained advice from his attorney that the stock option agreement was still valid. Accordingly, by letter dated September 13, 1993 Weisinger informed Rowland that he was exercising his option to obtain the voting rights to Rowland's 110 shares of stock. Respondent, as corporate secretary, entered the following on the corporation's stock transfer ledger:

> Ralph G. Weisinger exercised his option to purchase these shares on September 13, 1993 pursuant to a Stock Option Agreement between Mr. Rowland and Mr. Weisinger dated January 1991.

The next day, September 14, 1993, respondent and Weisinger filed a shareholder's derivative action in the Superior Court of New Jersey. The relief sought in the complaint included an adjournment of the special meeting of the shareholders scheduled for September 15, 1993 and specific performance of the stock option agreement between Rowland and

Weisinger. Respondent testified at the ethics hearing that, although he was unpleasantly surprised to learn that his counsel had named him as a plaintiff, he signed the verified complaint along with Weisinger. Because it was a shareholder's derivative action and respondent was a shareholder, he took no action to remove himself as plaintiff. The complaint alleged that Rowland had refused to return the stock certificates, despite a demand for them, and that Rowland had not acknowledged Weisinger's purchase of the 110 shares.

On September 15, 1993 the judge signed a temporary restraining order enjoining Rowland from voting, from conducting the shareholders' meeting and from taking any action to hire Osgood or his associates. The order scheduled a return date for October 5, 1993 to determine if the restraints should continue.

Before the return date of the order to show cause, respondent and Weisinger issued shares of stock to themselves and others. Specifically, the stock transfer ledger shows that the following stock was issued in October 1993:

Ralph G. Weisinger	12 shares
John W. Power [respondent]	14 shares
William B. Potter	1 share
Michael Berardesco	1 share
Casella & Hespos	1 share

The stock issued to Weisinger was purportedly in exchange for unpaid salary and unreimbursed expenses of $300,000.[2] Respondent's fourteen shares were issued as

[2] Neither Rowland nor Weisinger had received a salary for their service to the corporation.

compensation for $290,000 in legal bills owed by the corporation. Potter paid $25,000 for one share. Berardesco, who had prepared a model of the exhibition site to be used by the corporation in sponsor presentations, received one share of stock in exchange for his unpaid services. Similarly, the law firm of Casella & Hespos received one share of stock in lieu of payment of its bill for copyright services. Prior to that, in September 1993, one share of stock had been issued to two existing shareholders – Anthony and Kelley Corbett – for $25,000.

It is undisputed that the above shares of stock were issued without authorization from the board of directors or the other shareholders. To justify his action, respondent contended that the corporation was a close corporation in which matters were handled informally. He further claimed that, although there had been no meeting of the board of directors, he believed that three of the directors – Weisinger, Whitehead and himself – would later ratify those acts. Respondent conceded that he discussed the issuance of the stock with Weisinger only. Respondent maintained that, because he believed that Weisinger had validly exercised the stock option agreement, Weisinger had control of the corporation:

> I operated with the presumption that Mr. Weisinger was in voting control of the corporation. He was the only officer, in my opinion, who was advancing the interest of the corporation, despite Mr. Rowland's sort of self-destructive conduct. . . . I was working under the assumption that I had the implied and Weisinger had the implied authority of the Board of Directors consisting of a majority of three out of five, and the bylaws say that Board action is validated by a vote of the majority, the same people who signed the due diligence report. Even though there were no meetings called, I felt all along there was no question that the actions would be ratified.

[3T25-27][3]

According to respondent, the shares had been issued to cancel some corporate debts and thereby make the corporation's balance sheet more attractive to potential sponsors. Specifically, respondent stated, the corporation was very close to entering into an agreement giving McDonald's Corporation ("McDonald's") the exclusive right to provide food service at the exhibit. Respondent contended that McDonald's had agreed to pay the corporation $6,000,000 on a nonrefundable basis, subject to a review of the corporation's financial status. At that time, the corporation had debts of approximately $1,000,000. The sole corporate asset was its goodwill. Thus, respondent and Weisinger concluded, to enhance their chances of obtaining an agreement with McDonald's and of receiving much-needed revenues, some corporate debts would be extinguished by giving stock to the creditors.

At the ethics hearing, Rowland properly observed that, although he, too, was owed $600,000 for unpaid salaries and a loan to the corporation, neither respondent nor Weisinger offered to issue stock to him to satisfy those debts. Rowland also noted that the corporation owed various creditors a total debt of approximately $800,000 that was not eliminated by the issuance of stock to those creditors. Rowland also disputed respondent's claim that the McDonald's contract was close to being signed, asserting that the matter was required to be reviewed by an executive committee of the McDonald's franchisees. Rowland pointed out

[3] 3T refers to the May 27, 1998 hearing before the special master.

that, had the McDonald's contract come to fruition, the price of the shares would have increased.

Although the record is not clear, it appears that, on the original return date of the order to show cause, October 5, 1993, the judge dissolved the temporary restraints and ordered the shareholders' meeting to take place upon twenty days' notice to the shareholders. On October 19, 1993 the judge entered a confirming order denying the request for a preliminary injunction, dissolving the temporary restraints and allowing Rowland to proceed with the special meeting of the shareholders. Accordingly, Rowland gave the shareholders – including respondent and Weisinger – notice of a meeting scheduled for October 29, 1993.

On October 7, 1993, at Weisinger's direction, respondent sent notice to the shareholders of a special shareholders' meeting to remove himself and James Tuck as directors and to replace them with two shareholders, Potter and Burroughs. The meeting was to be held on October 27, 1993, two days before the meeting called by Rowland. Respondent did not provide notice of this meeting to Rowland because, he argued, he deemed the stock option agreement valid, despite the fact that that issue was being litigated at that time. Respondent claimed that, when he issued the notice of the meeting, Rowland was no longer a shareholder of record by virtue of the notation on the stock transfer ledger.

On October 26, 1993 Rowland obtained an order to show cause with temporary restraints enjoining respondent from conducting the October 27, 1993 meeting. At the

October 29, 1993 meeting, respondent and Weisinger were removed as directors and Rowland's proposed replacements were elected to the board. Rowland sent a November 1, 1993 letter to respondent informing him that, at the October 29, 1993 meeting of the board of directors, the board had voted to discharge him as general counsel and secretary.

With the sale of the two shares of stock to Corbett and Potter, the corporation received $50,000. By order dated January 3, 1994 the judge directed respondent and Weisinger to provide a complete accounting of those funds, most of which had been placed in respondent's trust account, and to return those funds to Rowland. The judge further ordered respondent to furnish a detailed accounting of the alleged debt for legal fees owed to his firm and to supply documentation executed by someone in the firm other than respondent, authorizing the receipt of shares in lieu of direct payment.

Following some delay, respondent returned the funds to the corporation. After imposing an attorney's lien on the corporate books and records, respondent finally returned them to the corporation in April or May 1994.

Of the $50,000 received from the sale of stock, $48,000 had been deposited in respondent's trust account. Respondent explained that Corbett, who had purchased one share, had insisted that the funds not be available to Rowland because he feared that Rowland would dissipate them. According to respondent, Corbett and Weisinger persuaded him to deposit the funds in his trust account to safeguard them. Respondent maintained that

he had followed the instructions of Weisinger, who was the corporate treasurer and chief financial officer, in making the disbursements. According to the accounting that respondent finally supplied, those disbursements were as follows:

09/20/93	Ralph G. Weisinger - corporate expenses	$3,000.00
10/14/93	Ralph G. Weisinger - corporate expenses	22,000.00
10/22/93	Silverman Associates, Inc. - due diligence investigation	2,435.63
10/22/93	Ralph Fink - court reporters	6,623.43
10/26/93	Ralph G. Weisinger - corporate expenses	2,000.00
Total Disbursements		$36,065.06
Balance in account		$11,934.94

Respondent, thus, had paid $27,000 to Weisinger. In addition, the debts due to Silverman Associates, Inc. and Ralph Fink had been billed directly to respondent's law firm. As pointed out by the presenter, of all of the corporate bills remaining unpaid, respondent had paid the two debts for which his law firm was responsible.

All of the disbursements were made while the litigation concerning the validity of the stock option agreement between Rowland and Weisinger was pending. Ultimately, that litigation was dismissed after Prazmark, who had sued the corporation when his marketing services contract had been canceled, filed a petition forcing the corporation into bankruptcy. The judge, therefore, never ruled on the validity of the stock option agreement between Rowland and Weisinger.

* * *

The special master determined that respondent acted dishonestly when he issued the thirty shares of stock without authorization from the board of directors, in an effort to gain control of the corporation. Specifically, the special master found the following:

> The acts of Power in issuing these shares was [sic] dishonest in that:
>
> (a) he acted to transfer corporate control from Rowland to Weisinger knowing that Rowland had refused to surrender the shares for transfer and contended that Weisinger's option was no longer valid;
>
> (b) the board of directors had not authorized the sale of stock to creditors at the price and terms involved. This is not a mere technicality. If the $6,000,000 commitment with MacDonald's [sic] had been obtained, the stock would have been worth many times $25,000 a share. Only the Board had the authority to price the new shares in light of these circumstances;
>
> (c) Rowland had received 110 shares and Weisinger 40 shares of founders stock when the corporation was formed. The private placement memorandum issued on July 14, 1992 only authorized the issuance of 20 additional shares, (Ex. E-4) of which all but 4 had been sold by September, 1993. The result was that Power, as secretary and general counsel authorized the sale of 26 shares of stock not permitted by the private placement memo, to the detriment of those shareholders who purchased in reliance on the limitation of 20 shares;
>
> (d) he signed stock certificates thereby certifying that the person named therein was the owner, and that the issuance had been duly authorized, knowing that the board had not authorized the issuance. (Ex. C-3);
>
> (e) he participated in the issuance of 12 shares of stock to Weisinger as payment of $300,000 of alleged back salary without authority of the board of directors;
>
> (f) he participated in the issuance of 14 shares to himself for a credit of $290,000 against his firm's bill without authority of the board of directors;

(g) he received corporate funds from the illegal sale of corporate stock, and diverted it to the payment of $27,000 of alleged expenses of Weisinger, and of disbursements owed his firm of $9,059.06 without board of directors approval, and in preference to other creditors of the corporation at a time when it was insolvent;

(h) Power, in violation of his duty as a board member, and as counsel, gave preference to certain creditors of the corporation over all other creditors at a time when the corporation was insolvent to the extent of $800,000. Power had advised the stockholders in his letter of October 22, 1993 that the corporation has liabilities of approximately $800,000 but no assets. (Ex. R-5)

(i) In selecting creditors to be paid, Power was guilty of a conflict of interest in that he selected those creditors of the corporation for which the law firm was primarily liable for services rendered.

The special master found that, contrary to respondent's contention, the corporation, with more than fifty stockholders, was not a close corporation. Accordingly, the special master noted, the corporation's policy differences should have been resolved at the shareholders' meeting called by Rowland, rather than through respondent's attempt to gain control by issuing unauthorized shares and granting Weisinger voting control of Rowland's shares. The special master found that Rowland was "the most credible witness" and that he "presented himself as an intelligent person who had a reasonable basis for his proposed course of action."

The special master noted that the consequences of respondent's misconduct were severe, causing lengthy, expensive and fruitless litigation that ended when the corporation was forced into bankruptcy.

The special master recommended a three-month suspension.

* * *

Following a *de novo* review of the record, the Board is satisfied that the special master's finding that respondent violated *RPC* 8.4(c) is supported by clear and convincing evidence. Respondent embarked on a course of dishonest and improper conduct in an effort to transfer control of the corporation to Weisinger and himself.

Respondent did not dispute most of the facts presented at the ethics hearing. As pointed out by the special master, the only material issues were whether the stock option agreement between Rowland and Weisinger was valid and whether the corporation was close to reaching an agreement with McDonald's. Respondent readily admitted that the issuance of the thirty shares of stock and the disbursement of the proceeds of the sale of stock were not authorized by the board of directors. The corporate bylaws provided that

> [t]he Board of Directors shall be responsible for the control and management of the affairs, property and interests of the Corporation, and may exercise all powers of the Corporation, except as are in the Certificate of Incorporation or by statute expressly conferred upon or reserved to the shareholders.

The board of directors, thus, was required to approve the issuance of additional stock. Respondent contended that he acted with implied authority, advancing a belief that three members of the board, Weisinger, Whitehead and himself, would have subsequently ratified his actions. He conceded, however, that he did not even discuss the issuance of stock with Whitehead, let alone seek his approval. Moreover, the subsequent ratification by the board would not have cured respondent's unauthorized actions because the bylaws also provided that "the action of a majority of the directors present at any meeting in which a quorum is

present shall be the act of the Board of Directors." Hence, the bylaws clearly required formal prior approval by a majority of the directors before stock could be issued.

Respondent also contended that he had taken direction from Weisinger, who he believed had majority control of the corporation after exercising the option to acquire Rowland's voting rights. There was no basis for respondent's belief. In Rowland's certification submitted in opposition to respondent's application for temporary restraints, he maintained that the stock option agreement was not valid. Indeed, when respondent alleged in the complaint that "Rowland does not acknowledge the purchase by Weisinger of the 110 shares," respondent anticipated that Rowland would deny the validity of that agreement. Had Rowland not contested the validity of the agreement, respondent's argument might have had some merit because there would have been no dispute over the issue. However, respondent's own view on the issue is not tantamount to "reasonable belief;" obviously, it is a mere reflection of his own understanding. Furthermore, this issue was the subject of the litigation that respondent filed. In the complaint, respondent sought an order directing Rowland to turn over the stock certificate to Weisinger. Yet, without judicial resolution of the matter, respondent noted on the stock transfer ledger that Rowland's 110 shares had been transferred to Weisinger. There was, thus, no reasonable support for respondent's claimed belief that Weisinger had control of the corporation.

Respondent's improper conduct was designed to shift control of the corporation from its president and founder, Rowland, to Weisinger. Respondent's disagreement with Rowland's policies did not entitle him to act without proper corporate authorization. The

fact that respondent might have genuinely believed that he was protecting the corporation does not absolve him of responsibility for his actions. Even if respondent believed that it was not in the best interest of the corporation to retain Osgood, his remedy was to attend the special shareholders' meeting called for that purpose and to express his views. Instead, respondent tried to wrest control from Rowland by improper means.

Respondent's actions were committed, in part, for his own pecuniary gain. By issuing fourteen shares of stock to himself to satisfy his legal bill, he increased his holdings at a time when he believed that a lucrative contract with McDonald's was imminent. He, thus, received additional shares by crediting his legal bill with stock at $25,000 per share when, if the contract with McDonald's had been executed, the stock would have been worth much more. Although respondent arguably increased his risk by taking additional stock as payment for his law firm's legal services, the insolvency of the corporation virtually guaranteed that respondent's bill would have remained unpaid. Moreover, the private placement offering issued in June 1992 specifically limited the authorized shares of stock to twenty. As pointed out by the special master, the purchasers of those stocks, as well as the existing shareholders, had the right to rely on that limitation. The issuance of additional shares was to their detriment because it reduced the percentage of their stock ownership in the corporation.

Respondent also received an economic benefit by paying the court reporter and private investigator bills from the $50,000 received from the sale of stock to Corbett and Potter. Rowland testified in great detail concerning the approximately $800,000 owed to

twenty-five creditors. Respondent paid only the two bills for which his firm had been responsible: the court reporter and private investigator fees totaling approximately $9,000. Although typically clients reimburse attorneys for out-of-pocket expenses, such as court reporter fees, the vendors look directly to the attorney for payment. Thus, while the corporation was ultimately responsible for payment of the court reporter and private investigator fees, respondent's law firm was still initially liable for those expenses. Consequently, respondent benefitted from the payment of those bills.

Respondent argued that the ethics charges should be dismissed because there is no precedent for charging an attorney with a violation of *RPC* 8.4(c) for actions committed in a corporate setting. This argument has no merit. An attorney who commits professional misconduct in the context of a corporation is not shielded from responsibility for his actions. Moreover, in *In re Siegel*, 133 *N.J.* 162 (1993), an attorney argued that he should not be disbarred because the Court had not previously ruled that knowing misappropriation from one's law partners would be treated the same as knowing misappropriation from a client. The Court rejected the attorney's position, ruling that "[a] plainly-wrong act is not immunized because the victims are one's partners." *Id.* at 162. Similarly, here, respondent's misconduct is not immunized because his infractions were committed in a corporate setting. As a matter of policy, once an attorney's ethics impropriety is discovered, the disciplinary system does not turn a blind eye to it no matter the venue in which it occurred.

Although this issue was not raised below, respondent may have also violated *RPC* 1.7(b), which prohibits an attorney from representing a client if that representation may be

materially limited by the lawyer's own interests. Respondent's representation of the corporation may have been limited by his own interests as a shareholder. Any advice given or action taken by respondent in his capacity as general counsel to the corporation may have been tainted by his ownership of stock. Respondent's perception of any benefit to him as a shareholder may have clouded his professional judgment. *RPC* 1.7(b) permits such representation if the lawyer reasonably believes that the representation will not be adversely affected and the client consents after full disclosure. The special master found that respondent had engaged in a conflict of interest. Because, however, respondent was not given an opportunity to show that he complied with the requirements of *RPC* 1.7(b), the Board deemed it inappropriate to find such a violation.

In summary, respondent violated *RPC* 8.4(c) by knowingly committing the following acts without corporate authority: (1) issuing shares of stock to himself and others; (2) transferring Rowland's shares of stock to Weisinger when the validity of the stock option agreement was being litigated; (3) paying corporate debts that had been billed to his firm; and (4) paying Weisinger for alleged back salary and unreimbursed expenses. Respondent's acts were dishonest and calculated to shift control of the corporation from Rowland to Weisinger. Instead of resorting to these improper means, respondent should have voiced his concerns at the shareholders' meeting.

While there are no cases precisely on point, attorneys who have acted with deceit generally have been subject to a wide range of discipline. *See In re Olitsky*, 149 *N.J.* 27 (1997) (attorney suspended for three months for intentionally placing funds in his trust

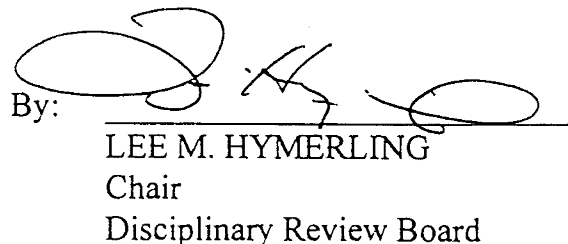
account because the Internal Revenue Service had imposed a tax lien on his business account. Olitsky admitted that to avoid the levy he deposited his personal funds into his trust account.); *In re Teitelbaum*, 149 *N.J.* 27 (1997) (attorney suspended for three months for lying about payments due to his law partner's minor child. Although Teitelbaum and his law partner had entered into an agreement requiring Teitelbaum to pay $150 per week to each of the partner's three children, Teitelbaum misrepresented to the mother of one of the children that the amount due was only $50 per week.); *In re Jenkins*, 151 *N.J.* 473 (1997) (attorney suspended for six months for improperly obtaining a decedent's medical records by signing the decedent's name on a medical authorization form and presenting that form to a hospital; the attorney knew that the decedent had died more than one year earlier); *In re Haft*, 146 *N.J.* 489 (1996) (attorney suspended for one year after he signed a mortgage that was invalid without the signature of the attorney's wife, failed to disclose to the mortgagee (his client) two prior mortgages, failed to record the mortgage and failed to reveal its existence to a lender in a subsequent refinance of the two prior mortgages, resulting in a loss of more than $130,000 to the client; the attorney also engaged in a conflict-of-interest situation.); *In re Weston*, 118 *N.J.* 477 (1990) (attorney suspended for two years for signing a deed and affidavit of title in the name of a client without authorization and subsequently lying to the purchaser's attorney about the documents' authenticity); *In re Lunn*, 118 *N.J.* 163 (1990) (three-year suspension where attorney submitted, in support of his own claim for personal injuries, a statement that he had written, represented that it was his deceased wife's statement and deliberately and repeatedly lied about the authenticity of the statement under oath in a civil action pursued in his own behalf). *See also In re Schnepper*, *N.J.* (1999) (attorney reprimanded for

engaging in a conflict-of-interest situation where he (1) improperly advised a shareholder in a close corporation to insert the shareholder's name on a stock certificate that had been endorsed in blank, (2) conducted a special shareholders' meeting at his office at which the board of directors and corporate officers were elected, despite the attorney's knowledge that another shareholder was not able to attend the meeting and (3) reissued new stock without consulting the excluded shareholder. Although the Board did not specifically label the attorney's conduct dishonest, it found that his outright partiality toward a client – to the detriment of another client – bordered on underhandedness. The Court has not yet acted in that matter.)

Here, respondent's serious misconduct was aggravated by actions taken in his self-interest. Respondent issued shares to himself, thereby increasing his percentage of corporate ownership at a time when he believed that a lucrative contract was imminent. Respondent took no risk, as the corporation was insolvent. In addition, he paid only those corporate debts for which his law firm was responsible. Based on the foregoing, the Board unanimously determined to suspend respondent for six months. Three members did not participate.

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

Dated: 5/13/99

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

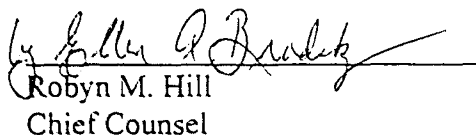
In the Matter of John M. Power
Docket No. DRB 98-375

Argued: November 19, 1998

Decided: May 13, 1998

Disposition: Six-Month Suspension

Members	Disbar	Six-Month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		x					
Zazzali							x
Brody		x					
Cole		x					
Lolla		x					
Maudsley							x
Peterson							x
Schwartz		x					
Thompson		x					
Total:		6					3



Robyn M. Hill
Chief Counsel