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September 23, 2014

Mark Neary, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: In the Matter of David R. Carmel
Docket No. DRB 14-163
District Docket No. XIV-2013-0329E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand to three-month suspension), filed by the Office of Attorney Ethics, pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion. In the Board's view, a three-month suspension is the appropriate measure of discipline for respondent's misconduct.

Specifically, respondent represented Mariner's Bank in connection with a March 2004 \$1,100,000 mortgage and loan to Nancy Raimondo, who had defaulted on the mortgage. In January 2008, respondent initiated foreclosure proceedings on behalf of the bank.

As part of an April 2009 settlement, title to the property was transferred to the bank and the foreclosure action was dismissed. Although respondent sent the new deed for recordation, it was returned to him for failure to pay the realty transfer fee. Mariner's Bank advised respondent to hold the deed unrecorded, while it found a buyer for the property. It did so to avoid paying

realty transfer fees on two separate transactions. Raimondo's attorney agreed to substitute a new first page of the deed with a new grantee, once the bank found a buyer and was ready to close title.

Once a buyer was in place, respondent reviewed the buyer's title search, which revealed an Internal Revenue Service (IRS) tax lien (\$10,584.57) that had not appeared on earlier searches of the property. Because that lien had been recorded before the bank's deed, the IRS had a prior claim against the proceeds of sale to the new buyer.

Instead of alerting the bank to the existence of the IRS' prior lien, respondent resorted to deception. Using an authentic lis pendens filed by another party in the foreclosure matter, respondent fabricated a lis pendens notice for the bank's dismissed foreclosure action, backdated it to March 17, 2008, and affixed the March 20, 2008 "filed" court stamp from the authentic lis pendens document. He did so believing that the IRS would conclude that its lien was junior to that of the bank and would then release its tax lien.

On August 18, 2009, respondent sent the false lis pendens to the IRS. By his actions, he misrepresented that the bank had filed a lis pendens, in its foreclosure matter, a year before the IRS had perfected its lien. Hearing nothing from the IRS, on January 5, 2010, he sent them a settlement offer.

Ultimately, the IRS sought a meeting with respondent, to be held at the U.S. Attorney's office for the District of New Jersey. With IRS and U.S. Attorney officials present, respondent admitted his fabrication.

By fabricating the lis pendens document and affixing a court's seal to it, respondent attempted to perpetrate a fraud on the IRS. In doing so, he violated RPC 8.4(c).

The Board concluded that respondent's egregious misconduct was similar to that of the attorney in In re Russo, 212 N.J. 191 (2012). Russo received a three-month suspension for fabricating or altering court orders and a notice of appeal, and forging the client's signature on a certification filed with the court. He also misrepresented the status of the litigation to the client.

In mitigation, the Board considered that respondent has no prior final discipline since his 1972 bar admission, and that he personally paid the IRS \$14,186.65 plus interest, to extinguish the lien, because he believed that he alone was responsible.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated May 23, 2014.
2. Stipulation of discipline by consent, dated May 23, 2014.
3. Affidavit of consent, dated July 1, 2014.
4. Ethics history, dated September 23, 2014.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/paa
encls.

c: Bonnie C. Frost, Chair (via e-mail)
Disciplinary Review Board (w/o encls.)
Charles Centinaro, Director
Office of Attorney Ethics (w/o encls.)
Maureen G. Bauman, Deputy Ethics Counsel
Office of Attorney Ethics (w/o encls.)
David R. Carmel, Respondent (w/o encls.)