SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-152
District Docket No. XIV-08-148E

IN THE MATTER OF	:
DOREEN M. GOLDBRONN	:
AN ATTORNEY AT LAW	:

Corrected Decision

Argued: September 18, 2008

Decided: November 18, 2008

Lee A. Gronikowski appeared on behalf of the Office of Attorney Ethics.

Respondent appeared from Florida, via telephone.

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

This matter came before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), pursuant to R. 1:20-14(a). The motion is based on respondent's sixty-day suspension in Florida for violating rules comparable to New Jersey RPC 1.4(c) (failure to explain a matter to the extent necessary to permit the client to make informed decisions about the representation) (Fla. 4-1.4), RPC 1.7(a) (representing a client where the representation may be materially limited by a

personal interest of the lawyer) (Fla. 4-1.7), RPC 1.8 (a) (entering into a business transaction with a client or knowingly acquiring an ownership, possessory, security or other pecuniary interest adverse to the client) (Fla. 4-1.8), RPC 3.3(a)(1) (knowingly making a false statement of material fact or law to a tribunal) (Fla. 4-3.3), and RPC 8.4(d) (conduct prejudicial to the administration of justice) (Fla. 4-8.4(d)).

The complaint also charged respondent with violating Florida's 3-4.4 (commission by lawyer of an act that is unlawful or contrary to honesty and justice, whether committed in the course of the attorney's relations as an attorney or otherwise). New Jersey has no equivalent rule.[1]

Respondent did not notify the OAE of her Florida suspension, as required by R. 1:20-14(a).

The OAE recommends that we impose either a reprimand or a censure. We determine that a censure is the proper discipline for respondent's misconduct.

Respondent was admitted to the New Jersey bar in 1980 and to the Florida bar in 1984. She has no history of discipline in New Jersey. The New Jersey Lawyers' Fund for Client Protection report shows that she was ineligible to practice law for failure to pay

[1] The New Jersey rule most similar to Florida's 3-4.4 is RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer).

her annual assessment in 1984 (three weeks), 1986 (three weeks), and 2000 (almost two months). She became ineligible again on September 29, 2008.

On January 8, 2007, the Florida Bar filed a complaint against respondent, charging her with violations comparable to the RPCs set out above. On February 22, 2007, a default was entered against her for failure to file an answer. Respondent appeared, however, at the April 12, 2007 hearing on sanctions.[2]

The conduct that gave rise to the Florida Bar complaint against respondent was as follows:

Beginning in 1993, respondent represented Ethel B. Schlenkerman on estate matters. In March 1996, using her attorney letterhead, respondent wrote to several clients, including Schlenkerman, recommending that they invest in R & W Funding, Inc. ("R & W"), which respondent believed was a State of Florida guaranteed investment program involved in environmental clean-up. The investment was to be for fourteen months, with a twelve to fifteen percent rate of return. Respondent did not first investigate R & W, nor did she provide her clients with a risk assessment document, as required by such investment.

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[2] According to respondent, when she was served with the complaint, she was bedridden in New Jersey. She claimed that the Florida attorney overseeing her Florida practice had not opened the mail. In the same breath, however, she claimed that, because of her medical condition she was unable to answer the complaint.

R & W was not involved in environmental clean-up, nor was it part of Florida's guaranteed investment program. Instead, it was involved in purchasing, rehabilitating, and selling automobiles. Initially, respondent was unaware of this circumstance. As seen below, she found out about R & W's business purpose in February 1997.

In July 1996, respondent became employed by Waddell & Reed, Inc, a brokerage firm. That same year, she passed the Series VI securities broker examination.

In 1996, respondent attempted to sell Schlenkerman an investment in the form of a promissory note in Inland Restoration Funding, Inc. To sell this type of investment, respondent needed a Series VII license and was required to do due diligence before offering to sell such an investment. She did not obtain the required license and did not offer the note through Waddell & Reed.

On December 12, 1996, Schlenkerman wrote a $40,000 check to R & W Funding Corporation Trust Account. On December 16, 2006, using her attorney letterhead, respondent sent Schlenkerman a receipt from R & W. Respondent advised Schlenkerman that she would receive a promissory note within thirty days.

On December 23, 1996, R & W issued a promissory note to Schlenkerman for $40,000, with a twelve percent interest rate. It

was a high-risk unsecured investment that was not registered with the State of Florida. Because respondent was not a licensed stockbroker, she offered the investment through Richard Stock, a licensed securities broker with the now defunct securities firm of Baxter, Banks & Smith, Ltd. Stock received a commission of eight percent. On December 29, 1996, he gave respondent a personal check for $1,600, representing her half of the $3,200 commission. Respondent, however, was not eligible to receive a commission because she was not a licensed broker at the time of the investment.

In February 1997, respondent learned that R & W was not involved in environmental clean-up. On that same date, she sent Schlenkerman a letter stating that the company was considering ending its inland restoration environmental contract.

On March 13, 1997, respondent again wrote to Schlenkerman. The letter notified Schlenkerman that R & W was not dealing with the state environmental contracts.

In December 1998, Schlenkerman filed a Statement of Claim against respondent for arbitration with the National Association of Securities Dealers, Inc. Respondent and Schlenkerman ultimately settled this claim for $6,500.

The complaint alleged that respondent failed to investigate the investment prior to recommending it to the client, failed to

provide her with a risk assessment document, engaged in a conflict of interest, collected a commission for which she was not eligible, and made certain misrepresentations to the client and to the securities tribunal. Specifically, the complaint charged that respondent's letter to Schlenkerman, stating that R & W was considering ending its inland restoration environmental contract, contained a misrepresentation because the company had never been involved in environmental clean-up. The complaint alleged that respondent's answer in the securities arbitration matter contained that same misrepresentation, as well as two others: that respondent had not received a commission and that she had advised Schlenkerman, in her March 1997 letter, that R & W had never been an agent for environmental clean-up contracts.

One final allegation was that, on a Chapter 13 bankruptcy petition that respondent filed in February 2003, she failed to list a $5,000 debt to Schelenkerman. That debt represented the unpaid balance of the $6,500 settlement between respondent and Schlenkerman in the securities arbitration proceeding. The complaint alleged that respondent "knew or should have known her debt to Ms. Schlenkerman had not been fully paid and that there were no negotiations regarding the debt."[3] The complaint did not

[3] Later, on August 27, 2003, respondent paid the $5,000 balance to Schlenkerman.

specifically charge that such conduct constituted misrepresentation.

At the Florida hearing on sanctions, respondent offered testimony and explanations for her conduct. According to respondent, when Schlenkerman did not receive an interest check, respondent investigated the situation and discovered the change in the nature of the investment. She then advised Schlenkerman that the investment was not sound and, immediately thereafter, successfully negotiated the full return of Schlenkerman's $40,000 investment. Schlenkerman, however, opted to leave all of the funds in the investment, which she later lost. Subsequently, when Schlenkerman sued her in a securities arbitration tribunal, she negotiated a personal settlement with Schlenkerman and ultimately paid her in full.

As to the omission of the $5,000 debt from her bankruptcy petition, respondent explained that she had not listed it because she "had no plans on discharging that debt. We had already paid it. We were trying to work out a settlement."

Respondent urged the Florida disciplinary authorities to consider, in mitigation, that she had no intent to defraud the client; that she did not realize any pecuniary gain beyond the $1,600 "referral" from the broker; and that her conduct was a

one-time, negligent occurrence, as opposed to a "scam" or a pattern.

The ethics referee concluded that respondent "must be found guilty, by default, of violating Rules Regulating the Florida Bar 3-4.4; 4-1.4; 4-1.7; 4-1.8; 4.3.3; and 4-8.4(d), as alleged in the complaint." The referee perceived respondent's explanation for not listing the $5,000 debt to be "credible and plausible." The referee further perceived that, "when Respondent recommended her client make the investment, she believed it to be as represented," and that, "when she learned it was not, she immediately notified her client and thereafter negotiated a return of the client's entire principal, which the client declined and opted to maintain the high risk investment."

In aggravation, the referee considered that she obtained a personal benefit, that she was negligent in not determining whether there was a conflict of interest and in not providing her client with accurate information, and that she had "substantial experience in probate law."[4]

In mitigation, the referee considered that respondent had negotiated the return of all of Schlenkerman's invested funds, which Schlenkerman declined, choosing to proceed with the high-risk investment; that there was "minimal harm to [a]

[4] The record is not clear as to why respondent's experience in probate law is relevant to her conduct in a securities matter.

sophisticated and educated client;" that the harm to Schlenkerman could have been avoided, but that she declined the refund of her investment; that respondent had no disciplinary record; that she suffered from medical problems; that she had no dishonest motive; and that she had made a timely, good faith effort to make restitution or rectify the consequences of her misconduct.

The referee recommended that respondent be suspended for sixty days, monitored (proctored) for twenty-four months, complete an appropriate professional responsibility course and pass the professional responsibility portion of the bar examination; be prohibited from being associated with the business of selling securities or insurance, if she elects to continue to practice law; and that she pay all costs (presumably the costs incurred in the disciplinary proceedings).

On October 11, 2007, the Supreme Court of Florida approved the referee's report and suspended respondent for sixty days. The suspension was to be effective either thirty days from the date of the order, to enable respondent to close out her practice and protect her clients' interests, or immediately, if she was no longer practicing law.

The OAE viewed respondent's misconduct as a combination of conflict of interest and failure to take appropriate precautions in recommending an investment to clients. The OAE recommended

that respondent receive either a reprimand or a censure, relying on In re Barone, 180 N.J. 518 (2004) (reprimand for conflicts of interest by simultaneously representing the driver and passenger in two automobile cases, failure to communicate with the client, gross neglect and lack of diligence for failure to prosecute the complaints, and failure to restore the complaints after their dismissal without prejudice; mitigation included the attorney's full cooperation and candor, his efforts to pursue an appeal, and the lack of an ethics history); In re Kraft, 167 N.J. 615 (2001) (reprimand for attorney whose unethical conduct encompassed four matters; in one matter, he was found guilty of a conflict of interest by failing to explain to the client the advantages or disadvantages of pursuing her case jointly or independently of the client's co-worker, who was also represented by the attorney; in another matter, the attorney failed to clearly explain to the client his legal strategy, thereby precluding her from making an informed decision about the course of the representation and the pursuit of her claims; in all four matters, the attorney exhibited lack of diligence and failure to communicate with clients; and, in one of the matters, the attorney failed to prepare a written fee agreement); In re LaRusso, 190 N.J. 335 (2007) (censure for attorney who engaged in conflicts of interest in forty-five

cases by obtaining death benefits from the State on behalf of beneficiaries in order to ensure payment to funeral homes whom he also represented; in mitigation, the matter was the attorney's first brush with the ethics system in his forty years at the bar and the absence of economic harm to the clients); and In re Tobin, 186 N.J. 67 (2006) (censure for attorney who engaged in a conflict of interest by drafting a client's will that left the entire residuary estate to himself; prior reprimand).

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), another jurisdiction's finding of misconduct shall establish conclusively the facts on which we rest for purposes of disciplinary proceedings. We, therefore, adopt the findings of the Supreme Court of Florida and find respondent guilty of all of the charges in the complaint.

Altogether, respondent violated RPC 1.4(c) by failing to adequately explain the investment to Schlenkerman, thereby preventing her from making informed decisions on whether to proceed with it; RPC 1.8(a) by knowingly acquiring a pecuniary interest adverse to Schlenkerman, that is, obtaining an improper commission from an investment contrary to the client's interests; RPC 1.7(a)(2) by representing Schlenkerman when the representation was

materially limited by her own personal interest in the transaction, namely, the receipt of a commission; and RPC 3.3(a)(1) and RPC 8.4(d) by misrepresenting, in her answer in the arbitration proceeding, that she had not received a commission, that R & W was considering ending its involvement in the environmental clean-up program (a misrepresentation also made to the client), and that she had advised the client, in her March 1997 letter, that R & W had never been an agent for the environmental clean-up program.

On a procedural note, on September 15, 2008, respondent filed a motion with Office of Board Counsel, requesting that we consider additional facts and a different procedural history. We are precluded from doing so by R. 1:20-14(a)(5).[5]

Nothing prevents us, however, from considering any argument by way of further mitigation of respondent's conduct. In her motion, respondent argued that she will be prejudiced by being disciplined for an infraction that, due to the Florida's delay in proceeding with the grievance, is twelve years old, and that her otherwise unblemished record shows that the public need not be protected from her.

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[5] Moreover, the procedural history and facts asserted by respondent are not supported by competent evidence, much less any affidavits that she claimed she could provide. If respondent wishes to challenge the Florida proceedings, her only recourse, at this juncture, is to petition to have the Florida findings vacated and to request that the New Jersey proceeding be stayed until the resolution of the Florida proceeding.

We now turn to the question of the appropriate discipline for respondent's violations.

Reciprocal disciplinary proceedings in New Jersey are governed by R.1:20-14(a)(4), which provides:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

As the OAE noted, a review of the record does not reveal any conditions that fall within the scope of subparagraphs (A) through (D). Subparagraph (E), however, applies because New Jersey does not recognize a sixty-day suspension.

Generally, in matters involving misrepresentations to a tribunal, the discipline imposed in New Jersey ranges from an admonition to a term of suspension. See, e.g., In the Matter of

Lawrence J. McGivney, DRB 01-060 (March 18, 2002) (admonition for attorney who improperly signed the name of his superior, an Assistant Prosecutor, to an affidavit in support of an emergent wiretap application moments before its review by the court, knowing that the court might be misled by his action; in mitigation, it was considered that the attorney's superior had authorized the application, that the attorney was motivated by the pressure of the moment, and that he brought his impropriety to the court's attention one day after it occurred); In the Matter of Robin Kay Lord, DRB 01-250 (September 24, 2001) (admonition for attorney who failed to reveal her client's real name to a municipal court judge when her client appeared in court using an alias, thus resulting in a lower sentence because the court was not aware of the client's significant history of motor vehicle infractions; in mitigation, the attorney disclosed her client's real name to the municipal court the day after the court appearance, whereupon the sentence was vacated); In re Lewis, 138 N.J. 33 (1994) (admonition for attempting to deceive a court by introducing into evidence a document falsely showing that a heating problem in an apartment of which the attorney was the owner/landlord had been corrected prior to the issuance of a summons); In re Mazeau, 122 N.J. 244 (1991) (attorney reprimanded for failing to disclose to a court his representation of a client

in a prior lawsuit, where that representation would have been a factor in the court's ruling on the attorney's motion to file a late notice of tort claim); In re Whitmore, 117 N.J. 472 (1990) (reprimand for municipal prosecutor who failed to disclose to the court that a police officer whose testimony was critical to the prosecution of a drunk-driving case intentionally left the courtroom before the case was called, resulting in the dismissal of the charge); In re Clayman, 186 N.J. 73 (2005) (censure for attorney who made several misrepresentations in a bankruptcy petition filed on behalf of a client); In re Giorgi, 180 N.J. 525 (2004) (attorney suspended for three months for making misrepresentations to a court and to his adversary, counseling his client to make misrepresentations to the court, making loans to his client without observing the safeguards of RPC 1.8(a), engaging in a conflict of interest by arranging for one client to lend money to another client, making misrepresentations to the OAE, and failing to properly maintain his attorney records); In re Paul, 167 N.J. 6 (2001) (three-month suspension for attorney who made misrepresentations in several certifications filed with the court; the attorney also made misrepresentations to his adversary and in the course of a deposition); In re Forrest, 158 N.J. 428 (1999) (six-month suspension for attorney who, in a personal injury case in which he represented a couple, did not

disclose to his adversary, to an arbitrator, and to the court that the husband had died; at the arbitration proceeding, the attorney advised the wife not to disclose her husband's death and told the arbitrator that the husband was "unavailable;" the attorney later attempted to pursue a settlement with the adversary and disclosed the husband's death only after the court issued an order for the husband's medical examination; the attorney was moved by personal gain, in that the larger the settlement the larger his fee; the attorney had a prior private reprimand for negligent misappropriation and recordkeeping violations); In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who misrepresented to a judge that a case had been settled and that no other attorney would be appearing for a conference and obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension imposed on attorney who, after being involved in an automobile accident, misrepresented to a municipal court judge, to the police, and to her lawyer that her babysitter was driving her automobile and presented false evidence in an attempt to falsely

accuse the baby-sitter of her own wrongdoing; two members of the Court voted for disbarment).

For conflicts of interest a reprimand is generally imposed. "We have generally found that in cases involving a conflict of interest, absent egregious circumstances or serious economic injury to the clients involved, a public reprimand constitutes appropriate discipline." In re Berkowitz, 136 N.J. 134, 148 (1994). See, e.g., In re Mott, 186 N.J. 367 (2006) (attorney prepared, on behalf of buyers, real estate agreements that provided for the purchase of title insurance from a title company that he owned; notwithstanding the disclosure of his interest in the company to the buyers, the attorney did not advise the buyers of the desirability of seeking independent counsel and did not obtain from them a written waiver of the conflict of interest) and In re Poling, 184 N.J. 297 (2005) (attorney prepared, on behalf of buyers, real estate agreements that provided for the purchase of title insurance from a title company that he owned; the attorney did not disclose this fact to the buyers and did not inform them that title insurance could be purchased elsewhere).

In special situations, admonitions have been imposed on attorneys who have violated the conflict of interest rules post-Berkowitz. See, e.g., In the Matter of Cory J. Gilman, 184 N.J.

298 (2005) (attorney prepared real estate contracts for buyers requiring the purchase of title insurance from a company owned by his supervising partner; in imposing only an admonition, we noted that this was the attorney's first brush with the ethics system, that he had cooperated fully with the OAE's investigation, and that he was a new attorney at the time (three years at the bar)); In the Matter of Frank Fusco, DRB 04-442 (February 22, 2005) (attorney who represented the buyer and the seller in a real estate transaction without obtaining their consent did not technically engage in a conflict of interest situation because no conflict ever arose between the parties to the contract; special circumstances considered, including the attorney's desire to help friends, the absence of harm to the parties, the attorney's non-receipt of a fee, and the lack of a disciplinary record); and In the Matter of Carolyn Fleming-Sawyerr, DRB 04-017 (March 23, 2004) (attorney collected a real estate commission from her sale of a client's house; in mitigation, we took into account the attorney's unblemished fifteen-year career, her lack of intent to take advantage of the client, and the passage of six years since the ethics infraction).

When the conflict involves egregious circumstances or results in substantial economic injury to the client, discipline greater than a reprimand is warranted. In re Guidone, 139 N.J. 272, 277 (1994); In re Berkowitz, supra, 136 N.J. at 148.

Here, Although Schlenkerman suffered economic injury, the injury could have been prevented if she had accepted the return of her investment, as negotiated by respondent. Instead, she elected to continue with the high-risk investment. Furthermore, respondent reached a personal settlement with Schlenkerman, a settlement that was paid in full. Schlenkerman's financial loss, thus, cannot be attributed to respondent.

The conflict of interest was not respondent's sole infraction, however. She also failed to explain to Schlenkerman the details of the investment and made one misrepresentation to the client, which she repeated in her answer to the securities suit, and two other misrepresentations in that answer.

After considering the nature of respondent's violations and weighing the aggravating factor (personal gain of $1,600) against the mitigating factors (negotiation of a refund to the client, restitution by personal settlement, the medical problems considered by Florida ethics authorities, the lack of a dishonest motive, the absence of a disciplinary record, and the passage of almost ten years since the last incident (March 1999)), we determine that a censure is adequate discipline in this case.

By way of a protective order, we have sealed respondent's medical records, as requested by respondent.

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
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Doreen M. Goldbronn
Docket No. DRB 08-152

Argued: September 18, 2008

Decided: November 18, 2008

Disposition: Censure

Members	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Boylan			X			
Clark			X			
Doremus			X			
Lolla			X			
Stanton			X			
Wissinger			X			
Total:			9			

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel