

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-380

IN THE MATTER OF
JAMES V. SIMMONDS
AN ATTORNEY AT LAW

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Decision

Argued: January 29, 2004

Decided: March 17, 2004

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (“OAE”), based on respondent’s one-year suspension in New York.

Respondent was admitted to the New Jersey bar in 1982 and the New York bar in 1983. He has no prior discipline in New Jersey.

On June 5, 2002, New York ethics authorities filed a petition (formal complaint) charging respondent with conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of New York Disciplinary Rule 1-102 (a)(4) [comparable to New Jersey RPC 8.4(c)], as well as conduct adversely reflecting on respondent’s fitness as a lawyer, in violation of New York

Disciplinary Rule 1-102 (a)(7) [comparable to New Jersey RPC 8.4(b)].¹ On June 13, 2002, respondent filed an answer.

The matter was heard by Special Referee Vincent Pizzuto, who issued an October 31, 2002, report sustaining the charges.

On September 22, 2003, the Supreme Court of the State of New York, Appellate Division, Second Judicial Department, issued an opinion and order suspending respondent for one year, effective October 22, 2003. The decision summarized the facts as follows:

In early 1996 the United States Attorney for the District of New Jersey began an investigation into mortgage banking fraud which concerned a scheme to fraudulently obtain loans from a New Jersey mortgage company, Parkway Mortgage, Inc. (hereinafter Parkway). The investigation revealed that in late 1995 or early 1996, a client, T.S., asked the respondent if he would represent V. in the purchase of T.S.'s home with the proceeds of a loan from Parkway. The respondent represented V. for a \$1,000 fee.

Although T.S. informed the respondent that V. had the assets to close, he indicated that a letter from the respondent to Parkway, stating that the respondent was holding escrow money for V., was necessary in order to aid in the approval of V.'s loan. The respondent was aware that Parkway relied on a buyer's assets in approving loans and that it was being misled about V.'s assets.

The respondent authorized T.S. to write, sign, and submit such a letter under the respondent's name without knowledge of the amount of escrow being misrepresented. In February 1996 a Parkway representative telephoned the respondent and asked for a second updated letter verifying that the respondent was still holding approximately \$67,000 in escrow for V. T.S. assured the respondent that V. needed substantially less than \$67,000 to close and had that sum available to him from the settlement of a personal injury lawsuit. T.S. wrote the second escrow letter which he faxed to the respondent. This second letter falsely represented that respondent was holding

¹ Respondent's admitted misconduct also implicates New Jersey RPC 4.1(a) (1) (in representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person.)

approximately \$67,000 in his Mortgage Escrow Trust Account on behalf of V. The respondent clipped off the fax trailer at the top of the letter and submitted it to Parkway.

[Exhibit D at 2.]

The New York disciplinary authorities also considered several mitigating factors in determining the appropriate measure of discipline:

In determining an appropriate measure of discipline to impose, the Special Referee noted that the respondent demonstrates great remorse. The respondent's cooperation with both the government and the Grievance Committee has been total and unequivocal. The Grievance Committee submits that it has not previously issued any letters of caution or admonition to the respondent.

Balancing the severity of respondent's offense, the absence of actual harm to the lending institution, and the mitigation offered by the respondent, he is suspended from the practice of law for a period of one year.

[Exhibit D at 3.]

The OAE urged us to impose a one-year suspension, the same duration as that imposed in New York.

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

. . . The Board shall recommend imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record upon which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the Respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the misconduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (E).

Upon a review of the full record, we determined to grant the OAE's motion. We adopted the findings of the New York court.

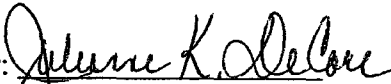
In New Jersey, similar misconduct has been met with a one-year suspension. See, e.g., In re Labendz, 95 N.J. 273 (1984) (one-year suspension for knowingly submitting a RESPA statement containing an inflated purchase price so that the buyer could obtain a higher mortgage; in imposing the suspension, the Court noted that it was the attorney's only instance of misconduct, that no one was harmed and that he received no personal benefit from the transaction.) Lengthier suspensions have been imposed where attorneys have been convicted of crimes arising out of real estate transactions. See, e.g., In re Capone, 147 N.J. 590 (1997) (two-year suspension for attorney who sought to purchase a real estate with a contract price of \$600,000; thereafter, he applied to a bank for a \$480,000 mortgage loan, which represented eighty percent of the \$600,000 contract price; one month later, the attorney negotiated a \$125,000 reduction in the purchase price, which the attorney did not disclose to the bank; rather, he continued to submit documents that listed a \$600,000 purchase price; the bank approved the loan, based on the misrepresentations contained in the

documents; the attorney ultimately defaulted on the loan, and pleaded guilty to knowingly making a false statement on a loan application); and In re Bateman, 132 N.J. 297 (1993) (two-year suspension imposed after attorney's conviction for conspiracy to commit mail fraud, and making false statements on a loan application, in order to assist a client in obtaining an inflated appraisal value on the property). Here, we note that respondent was not charged with a crime, and did not act for his own benefit.

Based on all of the foregoing, we unanimously determine to impose a one-year suspension, retroactive to October 22, 2003, the date of respondent's suspension in New York. Two members did not participate.

We also require respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Chief Counsel

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

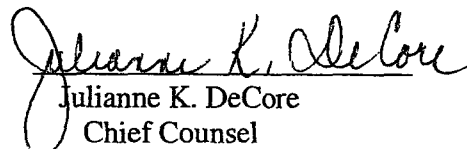
In the Matter of James V. Simmonds
Docket No. DRB 03-380

Argued: January 29, 2004

Decided: March 17, 2004

Disposition: One-year suspension

<i>Members</i>	<i>Disbar</i>	<i>One-year Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>		X					
<i>O'Shaughnessy</i>							X
<i>Boylan</i>		X					
<i>Holmes</i>		X					
<i>Lolla</i>							X
<i>Pashman</i>		X					
<i>Schwartz</i>		X					
<i>Stanton</i>		X					
<i>Wissinger</i>		X					
Total:		7					2


Julianne K. DeCore
Chief Counsel