SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-435
District Docket No. XIV-03-294E

IN THE MATTER OF	
RAYMOND L. POLING	
AN ATTORNEY AT LAW	

Decision

Argued: February 17, 2005

Decided:

Walton W. Kingsbery, III appeared on behalf of the Office of Attorney Ethics.

Katherine Hartman appeared for respondent.

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

This matter was before us on a disciplinary stipulation, filed by the Office of Attorney Ethics ("OAE").

Respondent was admitted to the New Jersey bar in 1972. On July 20, 1989, he was temporarily suspended from the practice of law pending the resolution of all ethics proceedings against him. Thereafter, by order dated October 11, 1990, respondent was suspended, retroactively to his July 20, 1989 temporary

suspension, based on his guilty plea for issuing a false financial statement, a third degree criminal offense under N.J.S.A. 2C:21-4(b)(2) and N.J.S.A. 2C:2-6. In a real estate matter, respondent had transmitted a preliminary title commitment to his clients' second mortgagee, falsely indicating that the second mortgage had been satisfied out of the closing proceeds of an earlier transaction, when it had not been. Respondent received a four-year term of probation, a $2,500 fine and 400 hours of community service. Respondent was restored to practice on January 2, 1991.

Respondent was a partner in the firm of Josephson, Poling & Wilkinson at the time of the within conduct in 1994. He was also the president of and sole shareholder in Shore Title Agency, Inc. ("STA"), an agent for Commonwealth Land Title Insurance Company.[1]

According to the stipulation,

> [t]he grievance alleged that beginning in approximately 1994, in Ocean City, New Jersey, respondent and other attorneys who held ownership interests in or were employed by title companies provided realtors with boilerplate real estate contracts, free of charge. The attorney-prepared contracts contained no 'three-day attorney review' provision. The realtors had the form

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[1] This matter was considered at the same time as In the Matter of Cory J. Gilman, DRB 04-434, dealing with similar misconduct by respondent's associate attorney.

> contracts executed by prospective purchasers and sellers. By doing this, the three-day attorney review period was avoided and the sale was immediately 'locked up'. The attorneys did not charge a fee for preparing the contracts, but benefited because the form contracts provided that the title company with which the attorney was affiliated would be utilized for the closing. Typically, it was alleged, the contract purchasers were not advised of the benefits of the three-day review period and were not told that the attorneys held ownership interests in the title companies.[2] This practice eventually became so widespread that it became known as "the Ocean City practice.'"
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> [S1.][3]

Between December 2001 and August 2002, respondent prepared at least seventeen "Ocean City" contracts. The table below was prepared from the facts contained in the stipulation:

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[2] The three-day attorney-review language was originally intended to apply to realtor-prepared contracts for the purchase of residential real estate, as the result of a settlement between the New Jersey Bar Association and the New Jersey Realtor Boards Association. New Jersey State Bar Association v. New Jersey Ass'n of Realtor Bds., 186 N.J. Super 391 (Ch.Div. 1982); New Jersey State Bar Association v. New Jersey Ass'n of Realtor Bds., 93 N.J. 470 (1983). There is no published authority requiring attorney-prepared contracts to contain similar language.

[3] "S" refers to the December 6, 2004 stipulation of facts.

Client Name	STA Named in Contract	STA Utilized By Client	Respondent Reviewed Contract with Clients	Respondent Disclosed Interest in STA	Respondent Received Fee	Attorney Review Clause Present
Anderson and Ross	Yes	Unknown	Yes	Yes	No	No
Brophy (Bayonne Place)	Unknown	Unknown	Unknown	Unknown	Unknown	No
Brophy (S. Inlet Dr.)	Yes	Yes	Unknown	Unknown	No	No
Brophy (E. Station Rd)	No	Yes	Yes	Yes	$100	No
Brown	Yes	Yes	No	Unknown	No	No
Ellison	Yes	Yes	No	Unknown	No	No
Eubanks	No	Yes	Yes	Unknown	$100	No
Gavranich	Yes	Unknown	Yes	Yes	$100	No
Lachman	Yes	Yes	Yes	Unknown	Unknown	No
Maira	Yes	Yes	Yes	Yes	Yes (Amt. Unknown)	No
Palestini	Yes	Yes	Yes	No	Yes (Amt. unknown)	No
Portner	Yes	Yes	No	Unknown	No	No
Powell	Yes	Yes	Yes	Unknown	Unknown	No
Schleider	Yes	Yes	Yes	No	No	No
Scurria	Unknown	Unknown	Yes	No	Might not have closed.	Might not have closed
Simmons	Yes	Yes	Yes	Unknown	Unknown	No
Walsh	Yes	Yes	Yes	No	No	No
Verdi	Yes	Yes	Yes	Yes	Yes (Amt. Unknown)	No
Zemaitis	Yes	Yes	Yes	No	No	No

According to the stipulation, respondent prepared the contracts in behalf of the buyers in all of the above transactions. In five of the matters, Brophy, Gavranich, Portner, Savage, and Schleider, respondent discussed the contracts with the clients, after the clients reviewed the contracts with the realtor.[4] The stipulation also refers to a sixth matter, Quintin/Bourgeis, but there is only one vague reference in the record to a Quintin/Bourgeis matter.

The stipulation contained a blanket admission, without reference to specific, individual matters, that (1) respondent's conduct violated RPC 1.4(b), insomuch as he did not explain matters to the extent reasonably necessary to permit the clients to make informed decisions regarding the representations; (2) he engaged in prohibited conflicts of interest situations with his clients, in violation of RPC 1.7(b); (3) he violated RPC 1.8(a), in that he entered into prohibited business transactions with clients without regard to the requirements of the rule; (4) he violated RPC 1.8(f), in that he accepted fees from STA for the legal representation of other clients, without adhering to the

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[4] The stipulation stated that respondent "contends" that he personally discussed the contracts with his clients prior to transmitting their contracts to the realtors. We find no evidence in the record to refute that contention.

consent provisions of the rule; and (5) he violated several Advisory Committee on Professional Ethics ("ACPE") opinions. See, e.g., Opinion 495, 109 N.J.L.J. 329 (April 22, 1982), prohibiting attorneys from representing buyers and lenders where the attorney also holds an ownership interest in the title insurance provider. Disclosure cannot cure the conflict of interest. See also Opinion 532 113 N.J.L.J. 544 (May 17, 1984) and Opinion 540 114 N.J.L.J. 387 (October 11, 1984), requiring attorneys to keep their law practice completely separate from their private business ventures.

The OAE recommended the imposition of a reprimand.

Upon a de novo review of the record, we are satisfied that the stipulation establishes that respondent is guilty of unethical conduct.

The parties did not cite the specific acts of misconduct committed within each individual matter. Therefore, we must correlate respondent's conduct to the RPCs cited as having been violated.

With regard to RPC 1.4(b), respondent failed to even review the contract of sale with the clients in Brown, Ellison and Portner. In Palestini, Schleider, Walder and Zemaitis, respondent failed to disclose to the clients that he owned STA, and that they did not have to utilize that company, but could

select their own title provider. By failing to advise his clients of these aspects of their transaction, respondent hampered their ability to make informed decisions about their respective representations, in violation of RPC 1.4(b).

In the remaining client matters, either the parties stipulated that respondent had discussed the contracts with the buyers, or the stipulation did not address the issue. Therefore, we make no findings of violation of RPC 1.4(b) in those instances.

With regard to the blanket reference to conflict of interest violations in the stipulation, we find that, specifically, respondent violated RPC 1.7(b).

At the time[5], the rule stated, in relevant part, that

> (b) a lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:
> (1) the lawyer reasonably believes the representation will not be adversely affected; and
> (2) the client consents after a full disclosure of the circumstances and consultation with the client, except that a public entity cannot consent to any such representation.

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[5] RPC 1.7 has been changed, effective January 1, 2004.

As the sole owner of STA, respondent had a financial interest in seeing that these matters proceeded to closing. His company stood to earn a fee. The conflict of interest rule prohibited him from representing the buyer/client in matters involving STA, unless the clients gave their consent, after full disclosure. We find that, in Brown, Ellison, Lachman, Maira, Palestini, Portner, Powell, Schleider, Simmons, Walsh, Verdi and Zemaitis, respondent's actions violated RPC 1.7(b).

In several other client matters, Anderson/Ross, Brophy (Bayonne Place) and Gavranich, however, it is not clear to us that respondent violated RPC 1.7. In those instances, the record does not support a finding that the buyer/clients ultimately used STA. Therefore, we cannot find respondent guilty of conflicts of interest in those matters.

In Scurria, the stipulation contains insufficient facts to support a finding of misconduct, and suggests that the matter may never have come to pass. Under the circumstances, we determine to dismiss the allegations of wrongdoing arising from Scurria.

With regard to RPC 1.8(a), respondent entered into prohibited business transactions with the clients in several matters:

Former RPC 1.8(a), amended January 1, 2004, provided that:

> A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless (1) the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that should have reasonably been understood by the client, and (2) the client is advised of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent counsel of the client's choice on the transaction, and (3) the client consents in writing thereto.

In Brophy (S. Inlet Dr.), Brophy (E. Station Rd.), Brown, Ellison, Eubanks, Lachman, Maira, Palestini, Portner, Powell, Schleider, Simmons, Walsh, Verdi and Zemaitis, respondent represented buyers in real estate transactions in which the clients used his title company. In those matters, respondent stood to earn a fee through his wholly-owned title agency, STA. He took a step in the right direction in some of those matters by disclosing his interest in STA to them. However, respondent did not obtain the required written waivers in any of the matters. We find that his failure to do so was, in each instance, a violation of RPC 1.8(a).

Finally, the stipulation makes a reference to a Quintin/Bourgeis matter, but contains no other information about that transaction. Therefore, we dismiss that matter.

It is well-settled that, absent egregious circumstances or serious economic injury to clients, a reprimand is the appropriate discipline in conflict of interest situations. In re Berkowitz, 136 N.J. 134, 148 (1994).

Where an attorney's conflict of interest has caused serious economic injury or the circumstances are more egregious, the Court has not hesitated to impose a period of suspension. See, e.g., In re Humen, 123 N.J. 289 (1991) (two-year suspension where the attorney engaged in numerous sensitive business transactions with his client, in which the attorney's interests were in direct conflict with those of the client); In re Harris, 115 N.J. 181 (1989) (two-year suspension where the attorney induced the client to lend large sums to another client of whom respondent was a creditor, without informing the first client of the financial difficulties of the borrowing client); and In re Dato, 130 N.J. 400 (1992) (one-year suspension where the attorney represented both parties in a real estate transaction, purchased property from a client for substantially less than its actual value, and resold it ten days later for a $52,500 profit).

Here, the stipulation contains sketchy details of each of the transactions before us, none of which lead us to conclude

that the clients were actually harmed by respondent's involvement in the Ocean City practice.

In aggravation, respondent has prior discipline for a 1989 criminal conviction, arising out of a real estate transaction. However, we conclude that respondent's prior discipline is too remote in time to form the basis for enhanced discipline. Therefore, we unanimously determine to impose a reprimand. Member Ruth Lolla 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
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Raymond L. Poling
Docket No. DRB 04-435

Argued: February 17, 2005

Decided: March 30, 2005

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley			X			
O'Shaughnessy			X			
Boylan			X			
Holmes			X			
Lolla						X
Pashman			X			
Schwartz			X			
Stanton			X			
Wissinger			X			
Total:			8			1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel