SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-439

IN THE MATTER OF

STANLEY J. PURZYCKI

AN ATTORNEY AT LAW

Decision

Argued: May 11, 2000

Decided: November 27, 2000

Brian D. Gillett appeared on behalf of the Office of Attorney Ethics ("OAE").

Respondent waived appearance for oral argument.

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

This matter is before the Board based on a recommendation for discipline (disbarment) filed by special master Robert C. Shelton, Jr., J.S.C. (retired).

Respondent was admitted to the New Jersey bar in 1963. During the relevant time, he maintained offices for the practice of law in Hillsborough and Belle Mead, New Jersey. On January 3, 2000, he was temporarily suspended until further order of the Court. In re

Purzycki, 164 N.J. 292 (2000).

Respondent has no ethics history.

The complaint in this matter alleges violations of RPC 1.15(a) (knowing misappropriation of client trust funds and failure to safeguard client funds) (one count); RPC 1.15(b) (failure to promptly notify a client or third person of the receipt of property in which the client or third person has an interest and failure to promptly turn over the property) (one count); RPC 1.7(a) and (b) (conflict of interest) (three counts); RPC 1.8(a) (conflict of interest/prohibited transaction) (three counts) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) (five counts). At the ethics hearing, the Office of Attorney Ethics ("OAE") requested the special master to deem the complaint amended to add violations of RPC 8.4(b) (commission of a criminal act that reflects adversely on an attorney's honesty, trustworthiness or fitness as a lawyer). The special master allowed the amendment.

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Prior to oral argument, the OAE filed a motion to supplement the record to include information concerning respondent's federal grand jury indictment for three counts of mail fraud and respondent's subsequent conviction on the three counts. The indictment and conviction arose out of respondent's business dealings with Jan and Henryka Suchcicki. Those business dealings are also the subject of one of the matters before us. Respondent did not object to the OAE's motion, which we granted.

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I. The Mt. Stanton Associates/Joseph Modzelewski Matter (count one)

Effective January 1, 1985, Mt. Stanton Associates ("Mt. Stanton"), a general partnership, was formed to invest in and develop land. Respondent had a thirty percent interest in the partnership. The other partners and their respective partnership interests were Joseph Modzelewski, twenty percent; John Cyburt, Jr., fifteen percent; Joseph Sobchinsky, fifteen percent; John Cyburt, Sr., ten percent[1]; and Marie Taluba, ten percent.

Respondent drafted the partnership agreement, which provided that the partnership profits and losses were to be divided among the partners according to the percentage of their interests.

On January 17, 1985, Mt. Stanton purchased one hundred acres of land with two houses, in Clinton Township, for $400,000. The partnership intended to subdivide the property and sell it to a developer. The purchase was funded by capital contributions from the partners and a mortgage loan from Suburban National Bank ("Suburban"). Suburban was later taken over by the Federal Deposit Insurance Corporation ("FDIC").

Count one of the ethics complaint charges that respondent improperly used funds from four types of transactions: (1) respondent's issuance of Mt. Stanton checks to himself,

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[1] John Cyburt, Sr. was John Cyburt Jr.'s and Maria Taluba's father and Joseph Sobchinsky's uncle. Cyburt, Sr. died in November 1992. The partners of Mt. Stanton were also partners in other real estate entities.

allegedly for legal fees; (2) respondent's deposit into his personal account of two checks issued by Jersey Central Power & Light Company ("JCP&L") to Mt. Stanton; (3) respondent's use of Modzelewski's capital contributions to the partnership; and (4) respondent's use of Modzelewski's share of the proceeds from the sales of three of Mt. Stanton's lots.

A. The Mt. Stanton Checks

In September 1991, Mt. Stanton sold a lot to Wilmark Building Contractors, Inc. ("Wilmark"). On September 3, 1991, respondent gave the other Mt. Stanton partners an accounting of the proceeds of the sale ("pay-off statement").[2] Respondent advised his partners that he was sending a $63,000 mortgage payment to Suburban. Unbeknownst to his partners, however, respondent sent only $12,159.49 to Suburban.

In November 1991, respondent issued a Mt. Stanton check to himself for $50,000 and deposited it in his personal checking account. In his personal records, he attributed the deposit to "Mt. Stanton." On the check stub, respondent initially wrote Suburban as the payee. Suburban's name was then crossed out and respondent showed himself as the payee for "various legal fees." As set forth below, there is a dispute as to when respondent made the changes on this and on a number of other Mt. Stanton check stubs.

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[2] After each sale, respondent forwarded to each partner a "pay-off statement" showing the amount of the outstanding mortgage and other expenses paid from the closing proceeds, the balance of the proceeds that remained to be distributed and each partner's share of the distribution.

In 1992, respondent issued three additional checks to himself from Mt. Stanton's funds: $6,000 in January, $4,000 in June and $3,500 in September.[3] Mt. Stanton's check stubs for the three checks originally showed Suburban and/or the FDIC as the payee. At some point, respondent changed the check stubs to reflect himself as payee for "legal fees on account."

Respondent deposited the $6,000 and $3,500 checks in his personal checking account and used the funds to repay personal loans. Although the OAE was unable to ascertain the disposition of the $4,000 check, respondent did not dispute that he had deposited the check in his personal account and had used the funds for his own expenses.

On May 27, 1993, respondent represented Mt. Stanton in a sale of lots 25.09 and 25.12 to Wilmark. The closing statement and the "pay-off statement" that respondent sent to the partners showed that $21,062.45 was sent to the FDIC as a mortgage loan payment and that Mt. Stanton received $89,112.65. In reality, respondent sent $107,786.88 to the FDIC and Mt. Stanton received only $2,388.22. The false closing statement contains respondent's signature on behalf of Mt. Stanton and a signature purporting to be that of Mark Hartman, on behalf of Wilmark.

In August 1994, the other Mt. Stanton partners retained another attorney to represent the partnership as a result of Modzelewski's complaint, detailed below, that respondent had not paid him his share of certain partnership distributions. By letter dated August 10, 1994,

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[3] The check stubs originally indicated that the June check was for $7,000 and the September check was for $6,822.50.

the new attorney advised respondent that he had been retained by the other partners and that respondent should send Mt. Stanton's books and records to Vincent Canterelli, Mt. Stanton's accountant, and Mt. Stanton's checkbook to Sobchinsky, one of the partners. The partners also demanded all funds due them and requested that respondent convey his interest in Mt. Stanton to them.[4] Canterelli then prepared a preliminary accounting of the partnership.[5] In his report, Canterelli indicated that he needed additional information to complete the accounting. Although the partners requested that respondent reply to the questions in the report, he did not do so.

In January 1995, respondent sent his partners a "bill" for legal services allegedly rendered since 1984. Respondent indicated that his total fees and expenses amounted to $114,944.50, that $111,368.50 had been paid and that a balance of $3,576 remained unpaid.

According to respondent, the Mt. Stanton partners had agreed that he would be paid an hourly fee of $150 for his legal services on behalf of the partnership and that his hourly rate would increase to $185 if his bills were not paid within "a reasonable time." Respondent further testified that, after he had sent the September 1991 letter to his partners stating that he was making a $63,000 mortgage payment to Suburban, he had "changed his

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[4] In July 1991, respondent assigned his partnership interest to Cyburt, Sr. as security for a $100,000 loan.

[5] According to Canterelli, he never did an audit of Mt. Stanton's books. For an audit, he would have verified that all that of the receipts and disbursements were as reflected in the records. Prior to the September 1994 accounting, Canterelli had only prepared Mt. Stanton's annual partnership tax returns and compilations from check stubs and bank statements. He did not prepare any financial statements, such as balance sheets or profit and loss statements.

mind" and decided to use the funds to satisfy legal fees owed to him. Respondent did not tell his partners about the change or sought their consent to the $50,000 fee because, in his view, he "had the discretion to do that." Similarly, according to respondent, the three additional checks issued to himself from Mt. Stanton's account represented payments for outstanding legal fees. Respondent did not explain why he did not deposit the checks in his attorney business account, as required by R. 1:21-6(a)(2), if indeed they represented payment of legal fees.

With respect to the changes on the check stubs, respondent testified that they had been made at the time he wrote the checks, before Canterelli reviewed them for the tax returns. He also testified that he had given Canterelli the canceled checks and the stubs.

As to the false closing statement for the May 1993 closing, respondent stated that he had prepared it shortly before the closing, relying on incorrect verbal information from the FDIC. The record reflects, however, that on April 23, 1993, the FDIC sent a letter to respondent with the correct pay-off figure.

Sobchinsky, Modzelewski and Taluba denied that they had agreed to pay respondent hourly legal fees of $150 and $185. They testified that respondent had been paid for each closing out of the closing proceeds and that they were not aware that respondent had issued the four checks to himself until sometime in1994. Taluba further testified that, in 1989, respondent had prepared an accounting of the partnership's funds as of October 11, 1989, including expenses paid and owed. On the accounting, respondent did not indicate that any

legal fees were paid or owed to him as of that time. Yet, on the January 1995 bill, respondent indicated that he was owed fees for work performed before October 11, 1989.

Sobchinsky and Taluba testified that they never received the true closing statement for the May 27, 1993 closing, only the false one. The "pay-off statement" that respondent sent was consistent with the figures listed on the false closing statement.

Sobchinsky and Taluba also testified that two signatures were required for a Mt. Stanton check and that Sobchinsky, Cyburt, Sr. and respondent had authority to sign checks. Cyburt, Sr. died in November 1992. It is undisputed that Cyburt, Sr. and respondent signed most of the Mt. Stanton checks and that, after Cyburt, Sr.'s death, Sobchinsky and respondent signed them.

According to Taluba, her father would go to respondent's office to sign checks. However, if her father was planning to be in Florida for any extended time, he would pre-sign checks so that respondent could pay bills in his absence. Sobchinsky testified that he would also pre-sign checks for respondent.

The OAE could not obtain a copy of the $50,000 check to ascertain who had signed it. The $6,000 check, however, was signed by respondent only. Although Cyburt, Sr.'s signature appears to be on the $4,000 and $3,500 checks, Taluba testified that it was not her father's signature.

Contrary to respondent's testimony, Canterelli testified that respondent did not give

him the canceled checks that are at issue here, only the check stubs and bank statements. He further testified that the changes on the check stubs had to be made sometime after the completion of Mt. Stanton's annual partnership tax returns, because the partnership records he had prepared showed the four checks as mortgage payments to Suburban/FDIC. According to Canterelli, he was not aware that the check stubs had been changed until sometime after his September 1994 accounting. Canterelli stated that the designation of the checks as mortgage payments caused the Suburban loan balance to be understated on Mt. Stanton's books.

Hartman, the individual who allegedly signed the May 1993 closing statement on behalf of Wilmark, testified -- and respondent conceded -- that it was not Hartman's signature on the false closing statement for lots 25.09 and 25.12. Respondent denied, however, having signed Hartman's name.

Daniel Soriano, Wilmark's attorney for the closing on lots 25.09 and 25.12, testified that he had prepared the true closing statement, the $107,786.88 check to the FDIC for the mortgage payment and the $2,388.22 check to Mt. Stanton. He stated that he saw the false closing statement for the first time when the OAE showed it to him.

According to the OAE's auditor, because respondent had not made the $63,000 mortgage payment in September 1991, as he assured his partners he would do, he had to deposit funds in Mt. Stanton's account to pay his partners their shares of the proceeds from the sale of lots 25.09 and 25.12. On June 3,1993, respondent wrote a personal check to Mt. Stanton for $41,718.10. That amount is equal to the sum of four Mt. Stanton checks that

respondent issued to the other partners (excluding Modzelewski) and of one check issued to Canterelli, less the $2,388.22 actually received from the closing. The Mt. Stanton check stubs showed that respondent did not take his distribution from the sale, although the pay-off statement indicated otherwise. The check stubs also indicated that respondent wrote a $21,545.02 check to Modzelewski for his share of the proceeds, then voided that check. The OAE auditor concluded that, although respondent claimed that he lent $41,718.10 to Mt. Stanton in June 1993, in reality respondent was simply replacing part of the funds that he had improperly taken in November1991.

B. The JCP&L Checks

In April 1992 and March 1993, respondent deposited in his personal checking account two JCP&L checks payable to Mt. Stanton, totaling $17,818.50. The JCP&L checks were rebates of advance deposits made to JCP&L by Mt. Stanton. Respondent did not record the receipt of those checks in Mt. Stanton's books.

Respondent testified that he deposited the JCP&L checks in his personal account because he was owed legal fees by Mt. Stanton.

Sobchinsky, Modzelewski and Taluba testified that they were not aware that JCP&L had rebated the advance deposits to Mt. Stanton. According to Sobchinsky, in August 1994 he had asked respondent about the rebates and had been told that they had not yet been received. Subsequently, Sobchinsky contacted JCP&L and learned that the rebate checks had been mailed.

Canterelli testified that it was critical to record the JCP&L rebates on Mt. Stanton's records because the initial advance deposits to JCP&L increased — and the rebates decreased — Mt. Stanton's basis in the property for purposes of calculating capital gains on the sale of the lots. According to Canterelli, he did not learn of the rebates until 1994 and, as of his September 19, 1994 accounting, had not yet ascertained what respondent had done with those funds.

The OAE auditor testified that respondent used the funds from the first check, $14,145, to partially fund a $45,000 certified check to the FDIC as pay off of respondent's existing mortgage on his Bridgewater house. Respondent did not dispute that he used the second check ($3,673.50) for personal expenses, but claimed that the funds represented legal fees owed by Mt. Stanton.

C. Modzelewski's Capital Contributions

In January 1992, respondent advised his Mt. Stanton partners that a capital contribution was necessary to pay Suburban's mortgage. Modzelewski, who resided in Florida, contributed $1,750. Respondent deposited the check in his personal checking account and did not record the receipt of those funds on Mt. Stanton's books.

In December 1992, Modzelewski made another capital contribution ($6,713.73) to Mt. Stanton to reduce his share of the partnership's outstanding mortgage. Respondent deposited Modzelewski's check in the Mt. Stanton checking account, but did not make a mortgage payment. Instead, in January 1993, respondent issued a $6,700 Mt. Stanton check to himself

from Modzelewski's funds. On Mt. Stanton's check stub, respondent showed the payee as the FDIC. At some point, respondent crossed out FDIC and made himself the payee "on account legal fees pay off release of loan." Respondent testified that he used Modzelewski's capital contributions because he was owed legal fees by the partnership.

On the records prepared by Canterelli for Mt. Stanton's 1993 tax return, the $6,700 check was reflected as a mortgage payment. According to Canterelli, the change on the check stub must have been made after he prepared the 1993 partnership tax return.

D. Respondent's Use of Modzelewski's Distributions

As noted earlier, between May and October 1993 respondent represented Mt. Stanton in the sale of three lots (25.09, 25.12 and 25.17) to Wilmark. According to the pay-off statements prepared by respondent, Modzelewski was owed $17,300, $17,540 and $3,900, respectively, from the three closings.

Instead of paying Modzelewski his share of the distributions, respondent issued checks to himself for the amounts due Modzelewski and deposited the checks in his personal checking account. On Mt. Stanton's check stubs, respondent showed Modzelewski as the payee on each of the three checks. The check stubs also contained additional notations: "share paid to SJP for mtg. payment overpayment" or "share pd. to SP for reimb. of mtg. payment."

Respondent testified that he took the funds as a partial repayment of the June 1993 loan he had made to Mt. Stanton. Respondent contended that the notations on the stubs were

made contemporaneously with the issuance of the checks. Respondent did not explain why the stubs showed Modzelewski, not himself, as the payee.

Canterelli testified that, here too, the notations on the stubs were added after he had prepared the 1993 partnership return. On the 1993 return, including Modzelewski's K-1, Canterelli showed the three checks as distributions to Modzelewski.

Mrs. Modzelewski testified that, in June 1994, she asked respondent why her husband had not received his share of the proceeds of a lot sale that closed in May 1994. Respondent replied that he had sent a check, which apparently had been lost, and that he would issue another check. When the check did not arrive, Mrs. Modzelewski contacted Taluba and learned that Taluba had received her share of the proceeds. The Modzelewskis then traveled to New Jersey and met with Sobchinsky to review his records of partnership distributions. Their review revealed that Modzelewski had not received his share of the proceeds from the three 1993 lot closings.

The Modzelewskis testified that, in August 1994, they confronted respondent about the missing distributions and that respondent replied that, if Modzelewski had not received the funds, they should still be in the account. Respondent then made out a check to Modzelewski. The Modzelewskis left without taking the check, but returned a few minutes later and requested it. Respondent then told them that he could not locate the check and that he could not issue another because otherwise there would be two outstanding checks.

The complaint alleges that respondent's conduct with respect to Mt. Stanton and Modzelewski violated RPC 1.15(a) (knowing misappropriation of client trust funds and

failure to safeguard client funds) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). As noted earlier, at the ethics hearing, the OAE requested the special master to deem the complaint amended to add violations of RPC 8.4(b) (commission of a criminal act that reflects adversely on an attorney's honesty, trustworthiness or fitness as a lawyer). The charge stemmed from respondent's alleged forgery of Hartman's signature on the false closing statement and the mailing of the statement to the Mt. Stanton partners.

II. The Capuchin Fathers Matter (count two)

In 1965, respondent represented the Capuchin Fathers, an order of Catholic priests, in the purchase of real estate in Oak Ridge, New Jersey. Sometime prior to 1985, the Capuchin Fathers began "investing" their funds with or "loaning" funds to respondent.[6] Apparently, there were no problems with the early investments. However, beginning in 1992, respondent began to delay payments on the investments and ultimately stopped sending them. Respondent deposited the Capuchin Fathers' funds in his personal checking account. Some of the funds were then deposited in respondent's brokerage account at Prudential Securities, Inc.

By letter dated April 2, 1993, respondent promised to repay the Capuchin Fathers with his proceeds from the sale of thirteen Mt. Stanton lots. His total debt amounted to several hundred thousand dollars. Respondent represented that there was a contract of sale for the

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[6] According to the Capuchin Fathers, as well as the individuals and organizations involved in the remaining counts of the complaint, believed that they were investing their funds with respondent. Respondent, on the other hand, contended that they had lent him the funds.

thirteen lots at $140,000 per lot, that he owned thirty percent of the partnership, that he would receive in excess of $300,000 from the lot sales and that he anticipated that the transactions would close "within the next few months." In his April 2, 1993 letter, respondent did not disclose to the Capuchin Fathers that, on July 15, 1991, he had assigned his interest in Mt. Stanton to Cyburt, Sr. as security for a $100,000 loan.[7]

From April 1993 through October 1994, respondent issued to himself fifteen checks, totaling $177,440.73, from Mt. Stanton's account. During that time, respondent made only four payments to the Capuchin Fathers, totaling $35,000.

On July 10, 1994, the Capuchin Fathers filed suit against respondent.[8] On August 28, 1996, the court entered judgment against respondent in the amount of $482,843.50.

Respondent testified that Father Tadeusz Krajewski ("Father Henry") had come to his office in 1985 and had "offered to lend money and there were loans made back and forth over a period of time." Respondent did not dispute that he had not repaid the total amount he owed the Capuchin Fathers, but challenged that he owed $482,843.50, as stated in the judgment. Specifically, respondent complained that the court had not given him credit for a $144,300 payment made on February 5, 1991.

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[7] By letter dated October 14, 1993, respondent promised to repay the Cyburt loan from his share of the proceeds of lots 25.01, 25.02 and 25.17. In June 1994, he repaid $27,000. In June 1998, Taluba, as executrix of her mother's estate, filed suit for repayment of the note. Summary judgment was entered against respondent for $100,983.

[8] Individual Capuchin priests, Father Joseph Krajewski, Father Tadeusz Krajewski and Father John Mucharski, also invested funds with respondent. They were listed as plaintiffs in the suit. The funds owed to them were included in the judgment against respondent.

Father Henry testified that, when he became the superior of the Capuchin Fathers in 1985, the prior superiors advised him of their earlier investments with respondent. According to Father Henry, he then met with respondent before investing additional funds. Father Henry testified as follows:

> [Respondent] say that [he] invest money – [he] own a few houses, [he] own land, and also he mentioned some invest [sic] in stocks. But I have no, you know, no knowledge about stocks, nothing. I trust, we trust [respondent], and especially our lawyer and our friend, and this is what happened.

Father Henry testified that respondent set the interest rate, which was usually ten or eleven percent. Typically, the terms of the investments were from six months to one year. According to Father Henry, respondent never advised him to consult with another attorney before investing with respondent. Father Henry considered respondent to be the Capuchin Fathers' attorney as well as his personal attorney. Besides respondent's representation for the 1985 real estate purchase, Father Henry could recall only two other instances when he consulted respondent. The first was when the Capuchin Fathers were interested in purchasing land in Oklahoma. At that time, according to Father Henry, respondent did some research and advised that the price was acceptable. However, the Capuchin Fathers did not purchase the property. Father Henry also brought his niece to consult with respondent about a possible purchase of a bakery. Respondent did not charge a fee for the two consultations.

With respect to the $144,300 check, Father Henry testified that he had never seen it Although the check was apparently negotiated, Father Henry denied that it went into any account owned by the Capuchin Fathers.

The OAE auditor testified that respondent's Prudential brokerage account was a margin account, i.e., respondent borrowed from Prudential fifty percent of the funds used to purchase stock. The auditor described the account as being "highly leveraged." From the time respondent opened the brokerage account in April 1989 to March 1991, he deposited $619,247.44 in the account and withdrew $270,000. Of the withdrawals, $144,300 was purportedly used to repay the Capuchin Fathers. By March 1991, respondent had lost $348,724.44 of the funds deposited in the account, which had a balance of only $523. Respondent admitted that a "substantial portion if not all of these losses" were funds he had received from the Capuchin Fathers and other "lenders."

The complaint alleges that respondent's conduct with respect to the Capuchin Fathers violated RPC 1.7(a) and (b) (conflict of interest); RPC 1.8(a) (conflict of interest/prohibited transaction) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

III. The Fathers of the Mission of Bolivia et al. Matter (count three)

This count of the ethics complaint concerns the following individuals and religious or charitable organizations that invested funds with respondent and were not repaid: Father Ignatius Kuziemski, the Fathers of the Mission of Bolivia, St. Joseph's Seniors Residence, Inc. and the Little Servant Sisters (collectively, "the grievants"). In 1996, the grievants filed a civil suit against respondent and his wife. Neither respondent nor his wife answered the complaint. The court dismissed the complaint as to respondent's wife and entered a default

judgment against him on June 5, 1998. The default judgment awarded the Little Servant Sisters and St. Joseph's Seniors Residence $674,715.63. Father Kuziemski and the Fathers of the Mission of Bolivia were awarded $61,628.62.

A. The Fathers of the Mission of Bolivia's and Father Kuziemski's Investments

Father Kuziemski is a parish priest and also the United States representative of the Fathers of the Mission of Bolivia. On July 10, 1988, on behalf of the Fathers of the Mission of Bolivia, he invested $10,000 with respondent at eleven percent annual interest. Respondent signed a note, which was due July 10, 1989. Respondent made only one payment on the note, $2,036.66, on September 26, 1990.

In September 1991, Father Kuziemski gave respondent an additional $45,000 and, in October 1991, $40,000. Respondent gave Father Kuziemski two notes, at eleven percent annual interest: the first due March 10, 1993 and the second due April 30, 1993. Respondent made the following payments to Father Kuziemski: February 1992, $17,000; September 1993, $40,000 and June 1994, $3,000.

In a September 29, 1993 letter to Father Kuziemski, respondent promised to repay the full amount "within the next few months." In an October 12, 1994 handwritten note, he assured Father Kuziemski that the balance on the notes would be repaid by the end of 1994. He did not, however, make any further payments.

Father Kuziemski testified that he met respondent through church affiliations and that respondent represented him in the sale of his mother's house, after her death in 1984. He

further testified that he invested funds with respondent because he knew that other charitable organizations had also made such investments.

According to Father Kuziemski, he and the superior of the Fathers of the Mission of Bolivia met with respondent prior to the Mission's investment. Father Kuziemski testified that respondent never advised them to consult with another attorney about the investment. Respondent assured them that "the money are more secured in his office than in any bank because the money are secured by real estate, by land." It was Father Kuziemski's understanding that respondent had purchased a large piece of land, which he intended to subdivide and resell.

In February 1992, according to Father Kuziemski, he requested that respondent repay the notes in full; respondent replied that he was unable to do so because a real estate closing had been postponed. As noted above, respondent made three payments, totaling $60,000, between February 1992 and June 1994 and repeatedly promised to repay the full amount. For some time after June 1994, Father Kuziemski called respondent every week. Respondent repeatedly told him that he would repay the funds after the real estate closing.

Respondent, for his part, testified that Father Kuziemski had offered to lend him funds. Respondent added that Father Kuziemski did not reveal the source of the funds. Respondent denied telling Father Kuziemski that the funds would be safer with him than with a bank or that he was going to use the funds for a real estate project. According to respondent, he explained to Father Kuziemski the terms and the lack of security for the loan, which was evidenced by a promissory note. Respondent also testified that he advised Father

Kuziemski to consult with another attorney about the loan. Respondent did not know whether Father Kuziemski had followed his advice.

Respondent has not repaid Father Kuziemski and the Fathers of the Mission of Bolivia, despite the $61,628.62 judgment against him.

B. The Little Servant Sisters Investments

In 1976, the Little Servant Sisters began a major fund-raising campaign to build a nursing home, St. Joseph's Seniors Residence. In or about 1985, they began investing the funds with respondent to obtain a higher rate of return than offered by banks. Initially, respondent repaid the Little Servant Sisters, with interest.

Sister Mary Louise Kwiatkowski of the Little Servant Sisters, the administrator of St. Joseph's Seniors Residence, testified that the Sisters contacted respondent because they had been told by another nun that respondent was investing funds for the Capuchin Fathers. The Sisters wanted short-term investments for the funds received from their building campaign. According to Sister Mary Louise, when she met with respondent, he told her that he was the president of a bank and that their funds would earn an interest rate of twelve to fifteen percent. Sister Mary Louise was adamant about respondent's representation that the building campaign funds would be deposited in respondent's bank. She denied that the Sisters ever agreed to lend the funds to respondent. She testified that, because of the high interest rate offered, the Sisters began to borrow funds from friends and relatives so that they could invest them in respondent's bank. As they received contributions to the building campaign, they

sent checks to respondent and received "receipts." According to Sister Mary Louise, they did not notice that the "receipts" were promissory notes because "we implicitly, unreservedly believed and put all our trust in [respondent]."

According to Sister Mary Louise, the funds were to be invested for time periods of one month to one year so that they would be available, as needed, for the construction of the nursing home. Until 1991, respondent always had the funds available when she requested them. However, in 1991, according to Sister Mary Louise, respondent began "stalling" her. When she went to respondent's office in October 1994 to obtain funds that were needed immediately, respondent gave her a $2,000 check, which was returned for insufficient funds. She testified that, when she called respondent about the check, he told her that he had purchased land with the funds and that the funds were "safe in land, it's better than even in a bank. I have land now and I have to just sell it."

According to Sister Mary Louise, the Little Servant Sisters and St. Joseph's Senior Residence have not collected anything from respondent, despite the June 1998 $674,715.63 judgment. She added that there is a $1,000,000 debt on St. Joseph's Senior Residence.

Respondent admitted that he did not repay three loans, totaling $343,687.50, received from St. Joseph's Seniors Residence and two loans, totaling $207,023.74, from the Little Servant Sisters. Respondent denied having told the Little Servant Sisters that he was a bank president or that the funds would be deposited with his bank. According to respondent, he explained the loan terms to the Little Servant Sisters, including the fact that the loans would only be secured by promissory notes. In two communications from the Little Servant Sisters

to respondent, in 1989 and 1994, the Sisters referred to their investment as a "C.D." Respondent admitted that "C.D." probably referred to a certificate of deposit, but stated that he did not correct the Sisters' reference because "they knew it was not deposited in the bank."

The complaint alleges that respondent's conduct with respect to Father Ignatius Kuziemski, the Fathers of the Mission of Bolivia, St. Joseph's Seniors Residence and the Little Servant Sisters violated RPC 1.7(a) and (b) (conflict of interest); RPC 1.8(a) (conflict of interest/prohibited transaction) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

IV. The Suchcicki Matter (count four)

Jan and Henryka Suchcicki are respondent's uncle and aunt. In or about 1976, the Suchcickis invested $10,000 with respondent, which was repaid with interest within a year. In 1991, respondent represented the Suchcickis in the sale of their house in Union, New Jersey and the purchase of a house in Toms River, New Jersey. He also represented them in their sale of a business in Irvington and had previously represented them in the purchase of their Union house.

In October 1992, each of the Suchcickis gave respondent $50,000. Respondent signed a note for each of them. The notes showed that they were to be repaid by October 9, 1993, at nine percent interest.

Respondent made the first interest payments in 1993 and the investments were

extended for another year. However, respondent did not repay the investments or the interest in 1994. Respondent advised the Suchcickis that he did not have the funds available at that time and that he would send them what he could.

By March 1995, he had repaid only $9,000 on the two investments. Because respondent made no further payments, the Suchcickis filed suit against him and his law firm in September 1996. By order dated June 27, 1997, the court entered partial summary judgment against respondent for $124,457.36. On March 20, 1998, the court entered final judgment against respondent for an additional $14,132.35 and a malpractice judgment against his law firm for $145,151.53.

Mrs. Suchcicki testified that they invested funds with respondent because his mother had told her and her husband that respondent was involved in real estate development and that, if they invested their money with him, he would pay them a better interest rate than a bank. Respondent also told them, according to Mrs. Suchcicki, that he "invested with the land and maybe [he] cut the land and make buildings or make something." When asked if respondent had spoken with her about collateral to secure repayment of the loan, Mrs. Suchcicki indicated that she did not understand the word "collateral."

According to Mrs. Suchcicki, when respondent did not make any payment in October 1994, she requested that he repay the entire amount. However, he only sent her partial interest payments. In November 1995, Mrs. Suchcicki testified, respondent promised to repay the investments before Christmas 1995, but did not do so. In January 1996, he told her that he had sold the land, that the closing was scheduled for the end of February and that he

would repay the entire amount due by March 1996. She stated that, when respondent did not pay her, she filed suit against him because she needed the funds. She added that, although she had obtained summary judgment against respondent and his firm, as of the August 11, 1999 ethics hearing date, she had not been repaid.

Mrs. Suchcicki testified that, although both she and her husband retired when they sold their butcher shop, she had to return to work on a part-time basis because of the financial difficulties caused by respondent. She stated that her husband is unable to work because of health problems. According to Mrs. Suchcicki, they refinanced their Toms River house three times and are unable to meet the current mortgage payments. The $100,000 they invested with respondent was to fund their retirement, "but now I'm broke, completely broke."

Respondent, in turn, testified that the Suchcickis had offered to lend him $100,000 at nine percent interest and that he had told the Suchcickis that he would give them a promissory note for the loan. According to respondent, he had informed the Suchcickis that he could not give them legal advice regarding the transaction and that they should think about the loan. Respondent did not contend that he had advised the Suchcickis to obtain independent legal counsel.

Respondent denied telling the Suchcickis that he was going to use their funds for real estate investment. He admitted that he used the funds to pay his personal expenses and debts, including those to St. Joseph's Seniors Residence and to the Capuchin Fathers.

The complaint alleges that respondent's conduct with respect to the Suchcickis

violated RPC 1.7(a) and (b) (conflict of interest), RPC 1.8(a) (conflict of interest/prohibited transaction) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

V. The Lumbermens Mortgage Matter (count five)

In March 1992, respondent and his wife entered into a contract to purchase a house in Somerville, New Jersey. On March 11, 1992, they applied to Lumbermens Mortgage Corporation for a $200,000 mortgage loan and submitted a signed handwritten loan application. At the May 1, 1992 loan closing, respondent and his wife signed a typewritten application.

The loan applications required disclosure of all personal liabilities of the applicants. However, respondent did not disclose his indebtedness to the Suchcickis, the Capuchin Fathers, the Fathers of the Mission of Bolivia, St. Joseph's Seniors Residence and the Little Servant Sisters.

Pursuant to Lumbermens' request, respondent provided copies of canceled checks to show that he had timely paid the final twelve monthly loan payments to Suburban for the mortgage on his Bridgewater house. The checks were purportedly from respondent's personal checking account at Suburban. However, four of the checks (numbers 201, 252, 260 and 276) did not have the magnetic encoding placed by banks, which meant that they had not been negotiated.

Respondent testified that he had given Robert Bodor, Lumbermens' mortgage

representative, a list of all of his assets and liabilities and that Bodor had prepared the handwritten application. Respondent further testified that, when he questioned Bodor about the omission of all of respondent's assets and liabilities from the application, Bodor replied that it was not necessary to list them.

With respect to the copies of the four checks that respondent supplied to Lumbermens, respondent acknowledged that the absence of the encoding meant that the checks had not been negotiated. However, he denied having made any misrepresentations to Lumbermens.

The OAE auditor testified that respondent's monthly bank statements showed that check number 201 had not been presented for payment. Furthermore, respondent's check register indicated that check number 201 had never been written because the register skips from check number 200 to check number 226, consistent with the bank statements.

With respect to the remaining three checks (numbers 252, 260 and 276), the bank statements and respondent's check register indicate that the checking account was closed in August 1991, prior to the issuance of the three checks. The last check written by respondent, as shown by the bank statements and respondent's check register, was number 235. The auditor could not categorically state that the account had been closed in August 1991 because the FDIC was unable to locate respondent's bank statements. According to respondent, he did not remember when he closed the account.

Bodor testified that he filled out the handwritten loan application in respondent's presence, based on information supplied by respondent. Bodor denied that respondent had told him about his personal indebtedness to the Suchcickis, the Capuchin Fathers, the Fathers

of the Mission of Bolivia, St. Joseph's Seniors Residence and the Little Servant Sisters. Bodor testified that Lumbermens would have wanted to verify that the loans were current and that the payments had been made on time and that, if that were not the case, the application could be negatively affected. According to Bodor, he would never have told respondent that the personal loans need not be listed on the application.

Bodor recalled that, prior to Lumbermens' approval of the mortgage loan, the loan underwriter questioned why some of the checks supplied by respondent were not encoded. Bodor did not know how the issue had been resolved, but he assumed that it had, because Lumbermens had funded the loan.

The complaint alleges that respondent's conduct with respect to the Lumbermens' mortgage loan applications violated RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). At the ethics hearing, the complaint was amended to add violations of RPC 8.4(b) (commission of a criminal act that reflects adversely on an attorney's honesty, trustworthiness or fitness as a lawyer) for the same conduct.

* * *

The special master found respondent guilty of all of the violations alleged in the complaint. With respect to count one, the special master found that respondent had converted partnership funds and "concealed his misappropriation of funds from the partnership which had entrusted the management of its funds to him not only as a partner, but more specifically as the attorney for the partnership." The special master concluded that

the misappropriations from Mt. Stanton constituted a "gross violation" of RPC 1.15(a) and (b) "and of themselves constitute a basis for discipline of nothing less than disbarment."

With respect to respondent's "loans" from individuals and religious and charitable institutions (collectively, "the grievants"), the special master rejected respondent's testimony that the grievants had approached respondent with offers of loans and that the grievants understood that the loans were only secured by respondent's promissory notes. The special master found credible the grievants' testimony that respondent had represented to them that the funds were to be invested in real estate or certificates of deposit and that he had assured them that the funds were more secure with him than in a bank. The special master concluded that respondent "knowingly and deliberately" obtained funds from "unsophisticated persons who relied upon his ability, integrity and position," and that respondent "completely misrepresented the use as to which these monies would be put, and used the stock market to gamble away the funds entrusted to him by these trusting and unsuspecting persons."

With respect to the Lumbermens matter, the special master found that respondent had not disclosed to Lumbermens his personal indebtedness to the grievants, as he was required to do, and that he had misrepresented to Lumbermens that he had timely paid his existing mortgage by submitting checks that had never been presented to the bank.

As to the alleged violations of RPC 8.4(b), the special master found it "clear" that respondent "committed or procured and uttered forgeries." However, while he found it "probable" that respondent had committed mail fraud, he did not find clear and convincing evidence of such criminal offense.

The special master recommended that respondent be disbarred.

* * *

Upon a de novo review of the record, we are satisfied that the special master's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

The special master correctly concluded that respondent knowingly misappropriated Mt. Stanton's funds and used those funds for personal expenses. Respondent did not dispute that, between November 1991 and March 1993, he (1) issued four Mt. Stanton checks to himself, totaling $63,500, and used the funds to pay for personal expenses; (2) deposited two JCP&L checks, payable to Mt. Stanton, totaling $17,818.50, in his personal account and used those funds for himself; and (3) used the funds from two of Modzelewski's capital contributions to Mt. Stanton, totaling $8,463.73, for his own expenses. In addition, respondent wrote three Mt. Stanton checks to himself, totaling $38,740, when those funds should have been paid to Modzelewski as partnership distributions.

Respondent's defense was that he was entitled to the funds because Mt. Stanton owed him legal fees. However, there is no evidence to support respondent's contention. In fact, there is clear and convincing evidence to the contrary, that is, that respondent was not entitled to the funds he took from Mt. Stanton. First, his partners in Mt. Stanton disputed his entitlement to the funds. They testified that respondent was paid his legal fees out of the closing proceeds of the sales of the lots. The closing statements for the lot sales support their

testimony. Second, respondent did not submit his bill until after his partners demanded that respondent turn over the partnership records and pay all funds due them. Third, in respondent's bill, he claimed entitlement to fees for work done since 1984. Yet, in his October 1989 accounting, which included amounts paid and owed by Mt. Stanton, he did not indicate that he had been paid or was owed any legal fees. Finally, respondent's attempts to conceal his actions belie any claim that he had a right to the funds. He put false payee names on Mt. Stanton's check stubs to conceal the fact that the checks had been made out to him. Sometime after Mt. Stanton's accountant reviewed the stubs, respondent crossed out the false payee names and put his own name on the stubs, sometimes adding false notations.

Respondent's testimony that the changes on the stubs were made contemporaneously with his writing of the checks was not credible. Mt. Stanton's accountant testified that the changes were made after he had reviewed the stubs in connection with his preparation of the partnership's annual tax returns. His testimony was supported by Mt. Stanton's tax returns and compilations made in conjunction with the tax returns.

In another context, the Court has held that "an inculpatory statement is not an indispensable ingredient of proof of knowledge, and that circumstantial evidence can add up to the conclusion that a lawyer 'knew' or 'had to know' that clients' funds were being invaded." In re Johnson, 105 N.J. 249, 258 (1987). Here, the testimony of respondent's partners and Mt. Stanton's accountant, as well as the circumstantial evidence -- such as the timing of respondent's claim that he was owed fees and the changes on the check stubs -- contradict respondent's defense that he was entitled to Mt. Stanton's funds.

The proofs establish that, as Mt. Stanton's attorney, respondent used his position to embezzle partnership funds and to conceal his thefts. For example, respondent was able to hide his theft of $50,000 from the funds earmarked to pay down the partnership's mortgage because, as Mt. Stanton's attorney, he was in a position to replace the true May 27, 1993 closing statement with a false one.

Although the Mt. Stanton funds taken by respondent were not expressly designated as escrow funds, there is no question that Mt. Stanton's partners entrusted the funds to respondent to be used for Mt. Stanton's mortgage loan payments, for other legitimate partnership expenses and for partnership distributions. Respondent had a fiduciary obligation to use the funds solely for legitimate partnership purposes. In re Hollendonner, 102 N.J. 21 (1985). See also In re Williamson, 162 N.J. 9 (1997). There, friends of the attorney, the Thompsons, gave him funds to purchase investment property on their behalf. The property was to be purchased in the name of a corporation to protect the Thompsons from personal liability and the funds were deposited in a brokerage account in the name of the corporation. The attorney did not tell the Thompsons that he and his partner were the only shareholders of the corporation. Instead of applying the funds toward the purchase, the corporation financed the transaction with a mortgage loan. The funds in the brokerage account were dissipated. Although it was not clear whether the Thompsons were clients of the attorney, it was held that the attorney nevertheless had a fiduciary duty to safekeep funds entrusted to him for specific purposes. The attorney was disbarred for knowing misappropriation of escrow funds.

Here, even if respondent were not Mt. Stanton's attorney and the funds were not escrow funds, disbarment would still be the appropriate sanction. Respondent's actions are analogous to those of the attorney in In re Imbriani, 149 N.J. 521 (1997). In Imbriani, the attorney was a shareholder of a small corporation that owned a medical building. He was not -- and could not be -- the attorney for the corporation because he was a superior court judge. The other shareholders were not involved in managing the financial affairs of the company. Imbriani collected the rent checks from the company bookkeeper and helped the bookkeeper pay corporate bills. Imbriani embezzled approximately $127,000 from the corporation by depositing rent checks in his personal account and by issuing checks to non-existent creditors of the corporation, endorsing the checks in the creditors' names and using the funds for his own purposes. As here, in Imbriani there were several acts of misappropriation occurring over an extended period of time. Imbriani was disbarred. See also In re Siegel, 133 N.J. 162 (1993) (disbarment for misappropriation of funds from a law partnership) and In re Spina, 121 N.J. 378 (1990) (disbarment for theft from an employer).

Even in the absence of knowing misappropriation, respondent's conduct with respect to the grievants in counts two through four of the complaint was so egregious that it would also warrant disbarment. Respondent obtained the grievants' funds by misrepresenting that they would be invested in a secure investment -- a bank certificate of deposit or real estate. He continued to make those misrepresentations after March 1991, after he had already lost all of the money, $619,241, in his brokerage account. It is clear that respondent was in serious financial straits by November 1991, when he began stealing funds from Mt. Stanton

and from his business partner, Modzelewski, to repay his "loans." Yet, respondent continued to "borrow" funds from religious and charitable organizations, making the same misrepresentations as to the security of their investments. The newly "borrowed" funds were used to repay earlier "loans," as in a "Ponzi" scheme, as noted by the special master.

In an effort to delay the lawsuits and the judgments that were ultimately entered against him, respondent lied to the grievants about why he could not repay the investments and promised to repay them shortly, knowing that he could not.

Respondent defrauded at least four organizations and ten individuals out of more than $1,000,000 over a period of several years. Some of his victims testified that they trusted him because he was an attorney. Clearly, respondent's dishonest and deceitful conduct violated RPC 8.4(c).

Whether respondent's investment scheme violated the rules against conflicts of interest is not so clear. The complaint alleges that respondent's conduct in each of the "loan" transactions violated RPC 1.7(a) and (b) and RPC 1.8(a). RPC 1.7(a) and (b) are not applicable here. RPC 1.8(a), in turn, prohibits an attorney from entering into a business transaction with or acquiring an interest adverse to a client, absent full disclosure and consent. The complaint does not allege — and there is no evidence —that respondent ever represented Father Kuziemski, the Fathers of the Mission of Bolivia, St. Joseph's Seniors Residence and the Little Servant Sisters.[9] Therefore, RPC 1.8(a) is also inapplicable to those

[9] With respect to the Capuchin Fathers, it appears that respondent only represented them once, in a 1965 real estate purchase. Father Henry consulted respondent on two other occasions: once for his opinion on a possible purchase of real estate in Oklahoma and again when his niece was considering purchasing a bakery. Respondent did not charge Father Henry for those consultations.

transactions.

The only clear evidence of a violation of RPC 1.8(a) is respondent's "loan" from the Suchcickis. Respondent represented them in connection with several real estate transactions, the last of which occurred shortly before the Suchcickis invested $100,000 with respondent.

Even if all of respondent's victims were not clients, respondent's prolonged fraudulent scheme, numerous misrepresentations and creation of fraudulent documents would still warrant disbarment. See In re Servance, 102 N.J. 286 (1986) (attorney disbarred for misrepresentation and fraud, despite absence of an attorney-client relationship, where investors were aware of and relied on the fact that he was an attorney. The attorney took approximately $40,000 from the investors, promised to double the investments in one month and failed to return the funds to the investors).

The evidence also clearly and convincingly shows that respondent violated RPC 8.4(c), when he failed to reveal his indebtedness on his Lumbermens' loan application and submitted fraudulent checks to show that he had made timely payments on his prior mortgage loan.[10]

In short, respondent's conduct toward these innocent and trusting victims was outrageous. Rarely do we see such callousness — indeed, evil — in our review of attorney disciplinary matters. For respondent's knowing misappropriation of escrow funds and his

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[10] Although the special master found that respondent "committed or procured and uttered forgeries," the special master was unable to find clear and convincing evidence of mail fraud. In light of the clear and convincing evidence of knowing misappropriation and fraud, it is not necessary to determine in this proceeding whether respondent also committed specific criminal acts, in violation of RPC 8.4(b).

fraudulent investment scheme, we unanimously determined to recommend that he be disbarred from the practice of law. One member did not participate.

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

Dated: 11/27/00

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Stanley J. Purzycki
Docket No. DRB 99-439

Argued: May 11, 2000

Decided: November 27, 2000

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling	X						
Peterson	X						
Boylan	X						
Brody	X						
Lolla	X						
Maudsley	X						
O'Shaughnessy	X						
Schwartz							X
Wissinger	X						
Total:	8						1

Robyn M. Hill 12/27/00
Robyn M. Hill
Chief Counsel