SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-277
District Docket No. XIV-01-007E

IN THE MATTER OF	
JOSEPH MARIN	
AN ATTORNEY AT LAW	

Decision

Argued: November 16, 2006

Decided: December 7, 2006

Michael J. Sweeney appeared on behalf of the Office of Attorney Ethics.

Robert J. DeGroot appeared on behalf of respondent.

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

This matter came before us on a disciplinary stipulation between the Office of Attorney Ethics ("OAE") and respondent. Respondent admitted violating RPC 1.1(a) (gross neglect), RPC 1.7(a) (conflict of interest), RPC 1.15(a) (failure to safeguard client funds and commingling personal and client funds), RPC

5.3(a), (b), and (c) (failure to supervise non-lawyer assistants), RPC 5.5(a)(2) (assisting a non-lawyer in the unauthorized practice of law), RPC 8.4(a) (assisting others in the violation of the Rules of Professional Conduct), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). We determine to reprimand respondent.

Respondent was admitted to the New Jersey bar in 1989. He maintains a law practice in Lyndhurst, New Jersey. He has no history of discipline.

I. Failure to Supervise Non-Attorney Employees and Assisting in the Unauthorized Practice of Law

From 1995 through 1997, respondent employed his brother, Jose Asdrubal Marin, a/k/a Drew Marin, a non-attorney, as his office manager. During the ethics investigation, respondent informed the OAE that, because he knew little about real estate matters, he had hired Drew to handle those matters for the firm. Respondent was aware that Drew prepared documentation for and attended real estate closings with clients and took other necessary steps to complete the transactions. Respondent received fees from these matters.

During the above time period, Drew impersonated respondent and held himself out as an attorney. The improper actions in which Drew engaged included, but were not limited to (1) issuing

false attorney escrow letters regarding non-existent deposits; (2) creating false second mortgages purporting to represent loans from sellers to purchasers; and (3) preparing "false and fraudulent" settlement statements that did not truthfully describe the receipt and disbursement of funds.

Respondent was not aware that Drew was engaging in the above misconduct. Respondent stipulated, however, that he had a duty to supervise his brother's work.

In October 2001, Drew pled guilty to a one-count information charging him with conspiracy to commit mortgage fraud through the use of interstate wire transmission, violating 18 U.S.C.A. §371. Exhibit 1, which is schedule B to Drew's plea agreement, lists twenty-four matters that he handled while employed by respondent. The court sentenced Drew to a thirty-month term of imprisonment, followed by supervised release for three years.

According to the stipulation, respondent's conduct violated RPC 5.3(a) (with respect to a non-lawyer employed by a lawyer, the lawyer shall adopt and maintain reasonable efforts to ensure that the non-lawyer's conduct is compatible with the professional obligations of the lawyer); RPC 5.3(b) (a supervising attorney shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer); RPC

5.3(c) (a lawyer is responsible for the conduct of a non-lawyer that would be a violation of the RPCs if (1) the lawyer orders or ratifies the conduct, (2) the lawyer has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action, or (3) the lawyer fails to make reasonable investigation of circumstances that would disclose past instances of conduct by the non-lawyer incompatible with the professional obligations of a lawyer, which evidence a propensity for such conduct); RPC 5.5(a)(2) (a lawyer shall not assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law); and RPC 8.4(a) (assisting another to violate the Rules of Professional Conduct).

II. The Romero Matter

On June 23, 1997, respondent represented Juan Romero in a real estate transaction. Romero purchased property located in West Orange, by way of foreclosure, for an undisclosed price. Romero's address listed on the RESPA statement was not a valid address. Because respondent had no other documentation with regard to Romero in his file, the OAE was unable to confirm whether he was the actual buyer in the transaction.

According to the complaint, respondent provided the $11,000 deposit in the transaction from his own funds, as well as borrowed funds. On that same day, June 23, 1997, respondent also represented Romero in the sale of the same property to Karen Anoll, respondent's sister-in-law. The sale price was $145,000. Respondent acknowledged Romero's signature on the affidavit of title for this transaction.

According to the stipulation:

> 5. Respondent would testify as follows regarding this transaction and the OAE cannot prove otherwise:
>
> A. Respondent believed at the time he was acting as a closing agent for Juan Romero who Respondent further believed at the time was an acquaintance of Respondent's brother, Drew.
>
> B. Approximately a month before the Romero from Summit Bank closing [the foreclosure sale], Respondent became aware that his sister-in-law, Karen Anoll, was going to purchase the property from Romero the same day that Romero was to purchase [it] from Summit Bank.
>
> C. Respondent was further made aware from his brother, Drew, that Romero needed $11,000.00 to close on the subject property and that if Romero did not close then Karen Anoll would lose her ability to purchase the subject property.
>
> D. Respondent was asked by his brother if Respondent could temporarily lend Romero $11,000.00 which would indirectly help Respondent's sister-in-law.

> E. Respondent agreed and in fact did lend Romero $11,000.00. The closing took place. Respondent took the notary of Juan Romero, after being satisfied of his identity.
>
> F. The property was subsequently sold by Romero to Respondent's sister-in-law, Karen Anoll.
>
> G. If the person who presented [sic] to be Juan Romero provided fraudulent documentation to Respondent on the day of closing, the Respondent was unaware of such fact at the time of closing.
>
> H. Respondent, at the time of closing, suspected no improprieties due to the fact that Respondent knew that his sister-in-law was to be the party who owned the property at the end of the day.

The RESPA in the "Romero to Anoll settlement" showed that Anoll "was given a credit for a deposit of $14,500." Respondent signed the RESPA, certifying that, to the best of his knowledge, the settlement statement was a true and accurate account of the funds received and disbursed as part of the transaction. The stipulation states, however, that "Respondent did not receive any deposit monies from or on behalf of Karen Anoll for this transaction."

According to the stipulation, respondent's conduct violated RPC 1.15(a) (failure to safeguard client funds and commingling personal funds with client funds), RPC 5.3(a), (b) and (c) and RPC 8.4(c). The stipulation does not specify the factual basis for the charged violation of RPC 1.15(a).

III. The Gonzalez Matter

On March 17, 1997, respondent represented Fausto and Jeannatte Gonzalez, who "supposedly" purchased real property in Newark from Riviera Homes for $159,000. Respondent represented Riviera Homes in other matters during the time he represented the Gonzalezes.

On the settlement date, March 17, 1997, when respondent disbursed the Gonzalez mortgage funds, Riviera Homes did not have title to the Newark property. Instead, James F. Johnson and Barbara Hauser owned the property.

On March 19, 1997, two days after the Gonzalezes bought the property, Riviera Homes purchased it from its true owners, James F. Johnson and Barbara Hauser, for $90,000.

According to the stipulation, "[r]espondent's professional judgment to act in the best interest of Mr. and Mrs. Gonzalez was compromised by his concomitant representation of Riviera Homes."

Respondent stipulated that his conduct in this matter violated RPC 1.1(a) (gross neglect), RPC 1.15(a) (failure to safeguard client funds), and RPC 1.7(a) (conflict of interest).

The OAE urged the imposition of a reprimand, citing the passage of time since the within violations occurred and respondent's lack of disciplinary history.

Respondent submitted mitigating factors for our consideration. He provided a poignant recitation of his travel to this country from Columbia, alone, at age seventeen; of the problems he encountered trying to earn a living; and of how he ultimately became a lawyer. Respondent's first job was cleaning motel rooms in Sufferen, New York. He learned to speak English, attended high school and college, and ultimately, in 1990, graduated from Mississippi Law School.

As a result of a chance encounter with a judge, while working as a waiter in a West Orange country club, respondent landed a position as his law clerk. After passing the bar examination, respondent worked as a public defender for three years, as a municipal prosecutor for nine and one-half years, and in private practice for twelve years.

According to respondent, he has worked closely with the Spanish community in Orange, East Orange, Newark, and Elizabeth; has appeared on local television and radio stations to discuss their pressing needs; has organized legal clinics for the indigent; and has garnered a number of commendations for his interest in the community.

Following a review of the stipulation, we are satisfied that it establishes by clear and convincing evidence that respondent's conduct was unethical.

The sparse stipulation demonstrates that respondent failed to properly supervise his brother, thereby violating RPC 5.3(a) and (b). Had respondent exercised closer scrutiny of the handling of his client matters, he would have detected his brother's fraudulent activities.

On the other hand, the stipulation does not state sufficient facts to support a violation of RPC 5.3(c). As to subsection (1), there are no stipulated facts to support a finding that respondent ordered or ratified Drew's improper conduct. Subsection (2) requires both respondent's knowledge of Drew's conduct at a time when its consequences could be avoided, and his failure to take remedial action. Here, too, the stipulated facts do not sustain a finding that respondent knew of Drew's conduct at a time when he could have stopped it. Finally, subsection (3) requires evidence of respondent's knowledge of Drew's improper conduct in the past and of respondent's failure to make a reasonable investigation of circumstances that would have disclosed it. Although the stipulation states that respondent knew that Drew was preparing documentation, attending closings with clients, and taking steps necessary to complete the transactions, it does not state that his conduct went beyond activities that a non-lawyer may perform. Moreover, paragraph 6 of this section of the stipulation specifically states that respondent was unaware that his brother was impersonating him,

acting as an attorney, and engaging in other fraudulent activities. We are, thus, unable to find a violation of RPC 5.3(c), notwithstanding respondent's stipulation to this charge.

Similarly, we cannot find that respondent assisted his brother in the unauthorized practice of law. It is not entirely clear from the stipulation that respondent knew or should have known that his brother was "practicing law." In fact, it is not even clear that Drew was acting as a lawyer. All the stipulation establishes is that respondent was aware that Drew was "preparing documentation and attending closings with clients, presumably, without respondent, and taking other steps necessary to complete the transactions." The stipulated facts do not clearly and convincingly demonstrate that Drew was acting as an attorney when he performed the above functions. It would not be unreasonable to infer from the language of the stipulation that Drew was acting as a paralegal. We, therefore, do not find that respondent violated RPC 5.5(a)(2).

Respondent also stipulated that his conduct violated RPC 8.4(a), which states, in relevant part, that it is professional misconduct for an attorney to knowingly assist or induce another to violate the Rules of Professional Conduct. There are no stipulated facts that support a finding that respondent violated this rule, given his lack of knowledge of his brother's improper actions.

In the two Romero real estate transactions, we find that the stipulated facts do not lend support for a finding that respondent violated RPC 1.15(a), by either failing to safeguard client funds or by commingling personal and client funds. As to RPC 5.3(a), (b), and (c), the stipulation does not allow a finding that respondent failed to supervise Drew's activities or, in fact, that Drew's conduct was improper. Drew's involvement in that transaction was limited to making respondent aware that Romero needed $11,000 for the deposit and asking respondent to lend Romero those funds. We, therefore, do not find violations of RPC 5.3(a), (b), and (c) in the two Romero matters.

The stipulation supports only a finding that respondent violated RPC 8.4(c) in the Romero transactions. He did not receive any deposit monies from or on behalf of Anoll. Yet, not only did the RESPA show a $14,500 deposit, but respondent certified that the RESPA was a true and accurate account of the funds received and disbursed as part of the transaction. That was untrue.

In the Gonzalez matter, we find that respondent's conduct in closing the Riviera Homes to Gonzalez transaction two days before Riviera Homes acquired title to the property amounted to gross neglect, a violation of RPC 1.1(a). His disbursement of the Gonzalez mortgage funds before Riviera Homes had title to the property also constituted gross neglect. We find that

respondent's disbursement of those funds was part and parcel of his gross neglect, rather than a failure to safeguard funds, as stipulated.

Finally, respondent's simultaneous representation of Riviera Homes and the Gonzalezes, albeit in unrelated matters, constituted a conflict of interest, a violation of RPC 1.7(a).

In sum, respondent's conduct violated RPC 1.1(a), RPC 1.7(a), RPC 5.3(a) and (b), and RPC 8.4(c). The only issue left for determination is the proper quantum of discipline.

The OAE cited several reprimand cases involving improper conduct in real estate transactions. See, e.g., In re Agrait, 171 N.J. 1 (2002) (attorney was grossly negligent, breached his fiduciary duty when he failed to verify and collect a $16,000 down payment shown on a RESPA statement in favor of his clients, and failed to disclose the existence of a second mortgage that was prohibited by the lender in the matter, resulting in a misrepresentation in the RESPA statement; he also failed to communicate the basis of his fee in writing); In re Spector, 157 N.J. 530 (1999) (attorney submitted false RESPA statements and two "Fannie Mae" affidavits and certifications to lenders in order to hide improper secondary mortgage financing); and In re Jackson, 151 N.J. 485 (1977) (attorney failed to disclose secondary financing to a mortgage company, despite its written

prohibition against secondary financing without written approval; the attorney also failed to safeguard client funds, failed to comply with recordkeeping requirements, and engaged in a conflict of interest by representing both the buyer and seller in "flip" transactions without making full disclosure of the implications of the common representation and the advantages and risks involved, and without obtaining consent from both parties).

See also In re Riedl, 179 N.J. 461 (2004) (reprimand for attorney who grossly neglected a real estate matter by failing to secure a discharge of a mortgage for approximately eighteen months after the mortgage was satisfied, failing to supervise his paralegal, negligently executed closing documents in four separate transactions, and allowing his paralegal to sign trust account checks).

In addition, attorneys who fail to supervise non-lawyer staff are typically admonished or reprimanded. See, e.g., In the Matter of Brian C. Freeman, DRB 04-257 (September 24, 2004) (attorney admonished for failing to supervise his paralegal, who also was his client's former wife, which resulted in paralegal's forging client's name on the retainer agreement and, later, on a release and a $1000 settlement check in one matter and on a settlement check in another matter; the funds were never returned to the client; mitigating factors included the attorney's clean disciplinary record, and the

steps he took to prevent a reoccurrence); In the Matter of Lionel A. Kaplan, DRB 02-259 (November 4, 2002) (attorney admonished for failure to supervise his bookkeeper, which resulted in recordkeeping deficiencies and the commingling of personal and trust funds; mitigating factors included the attorney's cooperation with the OAE, including entering into a disciplinary stipulation, his unblemished thirty-year career, the lack of harm to clients, and the immediate corrective action that he took); In re Bergman, 165 N.J. 560 (2000), and In re Barrett, 165 N.J. 562 (2000) (companion cases; attorneys reprimanded for failure to supervise secretary/bookkeeper/office manager who embezzled almost $360,000 from the firm's business and trust accounts, and from a guardianship account; the attorneys cooperated with the OAE, hired a CPA to reconstruct the account, and brought their firm into full compliance with the recordkeeping rules; a bonding company reimbursed the losses caused by the embezzlement); and In re Hofing, 139 N.J. 444 (1995) (reprimand for failure to supervise bookkeeper, which resulted in the embezzlement of almost half a million dollars in client funds; although unaware of the bookkeeper's theft, the attorney was found at fault because he had assigned all bookkeeping functions to one person, had signed blank trust account checks, and had not reviewed any trust account bank statements for years; mitigating factors included his lack of knowledge of the theft, his unblemished disciplinary record, his

reputation for honesty among his peers, his cooperation with the OAE and the prosecutor's office, his quick action in identifying the funds stolen, his prompt restitution to the clients, and the financial injury he sustained). But see In re Andril, 188 N.J. 385 (2006) (censure imposed for attorney who made misrepresentations to the OAE during the course of its investigation, and failed to supervise non-lawyer staff by permitting his secretaries to prepare RESPA statements, thereby abdicating all responsibility for insuring the accuracy of those documents; aggravating factors included the fact that 241 files were involved and the attorney's delay in correcting his false statements to the OAE).

In the present case, as in Jackson, respondent also engaged in a conflict of interest. It is well-settled that, absent egregious circumstances or economic injury to clients, a reprimand is appropriate discipline for engaging in a conflict of interest situation. In re Berkowitz, 136 N.J. 134, 148 (1994); In re Porro, 134 N.J. 524 (1993); In re Doig, 134 N.J. 118 (1993); In re Woeckener, 119 N.J. 273 (1990).

Notwithstanding the several RPCs that respondent violated, we are not persuaded that discipline stronger than a reprimand is required in this case. Compelling mitigating circumstances are present here. Respondent's ethics violations occurred almost a decade ago, he has no ethics history, and he has contributed

extensively to his community, for which he has received recognition. We find that the totality of circumstances do not call for the imposition of discipline greater than a reprimand.

Member Boylan did not participate.

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
William J. O'Shaughnessy, Chair

By: _____
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Joseph F. Marin
Docket No. DRB 06-277

Argued: November 16, 2006

Decided: December 7, 2006

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy			X			
Pashman			X			
Baugh			X			
Boylan						X
Frost			X			
Lolla			X			
Neuwirth			X			
Stanton			X			
Wissinger			X			
Total:			8			1

By Julianne K. DeCore
Chief Counsel