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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-287

IN THE MATTER OF

JEFFREY A. SCHNEPPER

AN ATTORNEY AT LAW

Decision

Argued: November 20, 1997

Decided: November 19, 1998

William E. Nugent appeared on behalf of the District I Ethics Committee.

Stephen M. Holden appeared on behalf of respondent.

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

This matter was before the Board based on a recommendation for discipline filed by the District I Ethics Committee ("DEC"). The complaint charged respondent with a violation of *RPC* 1.5 (b) (failure to communicate the basis or rate of a fee in writing), *RPC* 1.7(a) and (d) [presumably (a) and (b) were intended] (conflict of interest) and *RPC* 8.4 (c) (conduct involving dishonesty, fraud, deceit or misrepresentation), all related to respondent's representation of two shareholders of a small corporation.

Respondent was admitted to the New Jersey bar in 1976. He maintains an office in Cherry Hill, Camden County. Respondent has no history of discipline.

On April 17, 1991 respondent met with and was retained by Joseph P. Dunn, the grievant in this matter, and Dr. George W. Anderson, in connection with the purchase of a boat named "Sashay." Dunn and Anderson, long-term friends, had agreed to acquire the "Sashay," the sole asset of a corporation known as Long Life Ventures, Inc. ("LLV"), by purchasing LLV stock. Prior to the April 17, 1991 meeting, respondent had neither met nor represented Dunn. He had, however, represented Anderson as a tax consultant for approximately ten years. Respondent is an accountant as well as an attorney.

During the April 17, 1991 meeting, it was agreed that respondent would prepare a "cross-purchase buy-sell agreement" between Dunn and Anderson in connection with the LLV stock and negotiate for all ten outstanding shares of LLV stock from its sole shareholder, Frederick Norman. Pursuant to the agreement, Dunn and Anderson would each hold a fifty percent interest in the "Sashay" and would each contribute one-half of the purchase price.

Respondent did not prepare a written fee agreement. Dunn testified that respondent never explained his fee to him or advised him to have an independent attorney review the buy-sell agreement before it was signed.[1] Contrarily, respondent claimed that he had advised both Dunn and Anderson to have independent counsel review the agreement. Respondent testified further that he explained his hourly rate to both parties during the April 17, 1991 meeting and also supplied an estimated cost for the preparation of the agreement.

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[1] Dunn testified that he had another attorney, Ronald J. Casella, review the agreement before it was signed. However, Casella did not recall reviewing the agreement.

In his answer, respondent stated that he "was retained by the unit of Dunn and Anderson together in their purchase of the vessel" and that "[a]fter ten years of representing Anderson, [I] did not believe a written basis for his fees was necessary."

Anderson's wife, Joan Anderson, who was present at the April 17, 1991 meeting, testified that she recalled respondent's advice to both parties to have independent counsel review the buy-sell agreement. She also testified that respondent explained his fee to her and that she conveyed that information to Dunn and Anderson.

Following the April 17, 1991 meeting, respondent prepared the buy-sell agreement between Dunn and Anderson and also negotiated with John L. O'Brien, the attorney for Norman — LLV's sole shareholder — for the purchase of the "Sashay" and the outstanding shares of LLV. On May 10, 1991 Dunn and Anderson signed the agreement. Respondent was not present or otherwise involved in the signing of that document. On May 13, 1991 Norman endorsed the certificate selling and transferring the ten outstanding shares of LLV stock. The name of the purchaser was left blank on the certificate. Exhibit J-6A. Although respondent claimed a belief that the certificate would be issued to Dunn and Anderson, the record is clear that respondent knew that Norman would be endorsing the certificate in blank. O'Brien, Norman's attorney, had sent respondent a letter on May 6, 1991, stating as follows:

> Mr. Norman does intend to deliver to the purchasers at closing, endorsed in blank with his signature guaranteed, a stock certificate naming Mr. Norman as owner and representing all of the outstanding and issued capital stock of Long Life Ventures, Inc.
> [Exhibit G-2]

O'Brien had also sent a second letter to respondent on May 8, 1991, stating the following:

> . . . I will prepare an endorsement to Stock Certificate No. 2 to be

signed by Fred Norman in blank, unless you request otherwise regarding ownership of the stock by Messrs. Anderson and Dunn.
[Exhibit G-3]

Respondent acknowledged receiving both of O'Brien's letters. On that basis, the DEC concluded that respondent knew that the stock certificate from Norman to Dunn and Anderson would be issued in blank.[2]

Consistent with the terms of the transaction, Dunn and Anderson purchased the ten shares of LLV stock and the "Sashay" for $70,000, paying $35,000 each. All documents produced below in connection with the sale of the stock and the "Sashay" — except for the stock certificate — clearly evidenced that Anderson and Dunn each owned one-half of the stock and one-half of the "Sashay."

After their purchase of the stock, Dunn and Anderson sailed the "Sashay" from Florida to Philadelphia. During the trip a rift developed between them. On June 20, 1991, after their arrival in Philadelphia, Anderson telephoned respondent and notified him of the dispute. Anderson told respondent that Dunn wanted to terminate the business relationship. Respondent's notes of his conversation with Anderson contain the words "betrayed," "fraud," "breach of K [contract]," "reliance," all potential causes of action by Anderson against Dunn. Exhibit R-8. According to respondent, it was during this conversation with Anderson that he learned for the first time that the stock certificate had been issued in blank.

On respondent's advice, Anderson sent a letter to Dunn on June 21, 1991, offering to buy Dunn's interests in LLV. Exhibit R-4. The letter offered a $25,000 price, $10,000 less than what Dunn had paid for his one-half share of the "Sashay." Dunn rejected the offer. Exhibit R-3. In his

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[2]Although there is some reference in the record about accusations by Dunn that respondent stole a stock certificate from the "Sashay," there are no charges against respondent in this regard.

letter to Anderson, Dunn added the words "President, Long Life Ventures, Inc." below his signature. According to Dunn, he and Anderson had informally agreed that Dunn could present himself as president of LLV, seemingly to satisfy some requirements by the U.S. Coast Guard.

At respondent's suggestion, a special meeting of the shareholders of LLV was conducted at respondent's office on July 2, 1991. Respondent testified that the purpose of the meeting was to reunite Dunn and Anderson and to cancel and reissue the shares of LLV stock. Notice of the meeting was given to Dunn by undated letter from Mrs. Anderson, who signed the letter as secretary/treasurer of the corporation. The corporate by-laws required that Dunn be given ten days' notice of the meeting. Dunn testified, however, that he received the notice less than one week before the meeting.

On July 2, 1991 Dunn hand-delivered a letter to Mrs. Anderson indicating that he would be unable to attend the meeting. According to Dunn, he understood that respondent was now representing the Andersons alone. Therefore, he added, he did not want to go to the meeting without his own counsel, Ronald Casella, who was unable to attend. Exhibit R-5 is the letter from Dunn to Joan Anderson informing her that his attorney would not be available at 9:00 A.M. to attend the meeting at the office of "your accountant and attorney [ ] . . .," meaning respondent. The letter suggested to Joan Anderson that, if she felt that an accountant's assistance was necessary, one of the five names enclosed with the letter, which names Dunn had picked from the "yellow pages," could be selected. It is obvious that Dunn perceived respondent to be then in a conflict-of-interest situation for having previously represented and advised both him and Anderson. Dunn finished the letter with the statement, "I feel that any of these firms will be on neutral ground."

The Andersons were present at the July 2, 1991 LLV special meeting, which was conducted without Dunn. Respondent testified that he proceeded with the meeting in Dunn's absence because

he had to reissue the shares of LLV stock, as agreed at his initial meeting of April 17, 1991 with Anderson and Dunn. According to respondent, when Anderson had contacted him upon his return from Florida, Anderson had told him that the stock certificate had been endorsed in blank. Respondent testified that, at that time, he had advised Anderson to "make sure that there are names on that share" because he did not want "a blank share to be floating around." Respondent recalled telling Anderson that he intended to cancel that share and reissue new stock at the first shareholders' meeting. Respondent testified that it was only at the July 2, 1991 meeting that he had become aware that the stock certificate had been transferred to Anderson's name alone. Respondent claimed that it was Anderson's status as sole shareholder, as evidenced by the stock certificate, that permitted the initial meeting to be conducted in accordance with LLV's bylaws.

Respondent maintained that, at the July 2, 1991 meeting, he was acting as counsel for the corporation only and that his actions were being directed by Anderson, as shareholder. Respondent contended that Anderson had retained him as counsel for LLV when the latter had returned from Florida. Respondent asserted that he had stopped representing Dunn personally as soon as the purchase transaction had been completed.

At the July 2, 1991 special meeting of LLV, a Board of Directors and corporate officers were elected. Anderson was elected president of LLV, Dunn (who was not present) vice-president and Joan Anderson secretary-treasurer. After the election of the officers, the members of the Board of Directors present, Anderson and his wife, authorized the president, Anderson, to issue new stock certificates. The existing certificate was canceled and new stock certificates were issued as follows: 100 shares to Anderson, 100 shares to Dunn and one share to Mrs. Anderson. As a result of that

distribution, the Andersons obtained voting control majority in LLV[3]. It should be noted that the minutes of that special meeting of shareholders, Exhibit J-9, falsely stated that Dunn had placed his vote and signed his name on the ballot and that ten votes had been recorded from him for the election of the directors of the corporation. In fact, as noted earlier, Dunn was not present at that special meeting.

With regard to the one share of stock distributed to Mrs. Anderson, respondent testified that it had been agreed, at the parties' initial meeting with him on April 17, 1991, that Mrs. Anderson would receive one share of stock as compensation for her work as the secretary/treasurer of the corporation. Dunn, however, denied the existence of such agreement. Mrs. Anderson, in turn, testified that the parties had discussed her receiving ". . .one share after the three years was up and they sold the boat. I was entitled to one share of whatever the boat was sold for. [4] Respondent's notes of the April 17, 1991 meeting, although difficult to read, appear to state at the top of page two, "Bill & Joe - each 50% - no Joan - gets 1 share later for services as sec/treas." Exhibit R-7. This tends to support Mrs. Anderson's testimony that she was to be compensated for her services sometime down the road.

A second shareholders' meeting took place after July 2, 1991, which Dunn attended with Casella, as his attorney. At both meetings of the corporation, the Andersons controlled the voting majority. Ultimately, the "Sashay" was sold. Dunn, who did not object to the distribution of the proceeds, was represented at that time by Casella.

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[3] Because the Andersons had voting control in LLV, they were able to authorize expenses to which Dunn objected, including respondent's fee.

[4] It appears that Dunn and Anderson had agreed to sell the "Sashay" three years after its purchase.

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The DEC found that respondent violated *RPC* 1.5(b) by failing to communicate to Dunn, in writing, the basis or rate of his fee when he had not regularly represented Dunn. The DEC also found that respondent knew that the stock certificate had been endorsed in blank and that, despite the foregoing, he had instructed Anderson to become the sole owner of the LLV stock by placing his name on the certificate originally endorsed in blank. The DEC found further that at no time was it contemplated that Mrs. Anderson would have an interest in the "Sashay" or LLV. The DEC determined that respondent had violated *RPC* 8.4(c)

> when he directed Dr. Anderson to place his name on the stock certificate as the sole owner of the stock having that he represented both Dr. Anderson and Mr. Dunn. Furthermore, respondent participated in representing the corporation at the special meeting of shareholders on July 2, 1991 in the election of the Board of Directors and election of officers while he represented Dr. Anderson and Mr. Dunn. After the election of the officers, the Board of Directors then present at the meeting, *i.e.*, Dr. Anderson and his wife, authorized the president, *i.e.*, Dr. Anderson to issue new stock certificates. The certificate (Exhibit G-1B) was cancelled and new stock certificates were issued as follows: 100 shares of stock to Dr. Anderson; 100 shares of stock to Mr. Dunn; and one share of stock to Dr. Anderson's wife, Joan Anderson. As a result of the action taken by the newly created Board of Directors and officers of Long Life Ventures, Inc., Dr. Anderson and his wife, Joan Anderson, had voting control of the corporation to the detriment of Respondent's other client, Mr. Dunn. The Hearing Panel finds and determines that the precipitating event for the total control of the corporation by the Andersons was Respondent's direction to Dr. Anderson to place his name as the owner of the shares of stock previously endorsed in blank. Respondent permitted Dr. Anderson to control the stock of the corporation until it was reissued by a newly created Board of Directors and officers.
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> [Hearing panel report at 7-8]

With regard to the alleged violation of *RPC* 1.7, the DEC concluded that, prior to the special meeting of shareholders, respondent neither notified Dunn, nor was notified by Dunn, that their

attorney/client relationship had ended. The DEC, thus, found that respondent was guilty of a conflict of interest, in that he represented both the corporation and Anderson at the shareholders' meeting of July 2, 1991, to the detriment of Dunn. The DEC based its conclusion

> upon the actions taken by Respondent in directing the execution of the endorsement on the stock certificate and participation in the newly created corporation wherein control of the corporation was placed in the hands of the Andersons to the detriment of Mr. Dunn.
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> [Hearing panel report at 8]

The DEC recommended the imposition of a three-month suspension.

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Upon a *de novo* review of the record, the Board is satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence. The Board disagrees in part, however, with the specific findings of the DEC.

The DEC properly found that respondent violated *RPC* 1.5(b) when he did not communicate to Dunn, in writing, the basis or rate of his fee. Although it is true that respondent had represented Anderson before and, consequently, did not have to inform Anderson of his fee, Dunn was a new client. Accordingly, respondent had an obligation to comply with *RPC* 1.5(b).

The Board also agrees with the DEC's finding in connection with the more complex conflict-of-interest issue.

At the DEC hearing, the parties disputed whether respondent had counseled Dunn and/or Anderson to have an independent attorney review the buy-sell agreement prepared in behalf of both by respondent. Respondent and Mrs. Anderson contended that respondent had advised both parties

to consult with independent counsel about the agreement, whereas Dunn denied that respondent had given him such advice.

While at first glance, it might appear that there was no duty on respondent's part to disclose the circumstances of the representation to Anderson and Dunn and to obtain their consent to the representation, as required by *RPC* 1.7, in fact both actions were necessary. Initially, Dunn and Anderson's interests were not only common, but identical: both paid one-half of the price to acquire the "Sashay" and both obtained a one-half interest in the vessel: respondent could not have favored one client over the other because each party's participation in the transaction was equal, with the same rights and same obligations. Nevertheless, even though Dunn and Anderson's interests were one and the same at the outset of the transaction, respondent should have obtained Dunn's consent to the dual representation because respondent already had a longstanding professional relationship of ten years with Anderson, as a tax consultant. Under these circumstances, it would be reasonable for Dunn to believe that respondent could favor Anderson over him in the representation. At a minimum, respondent should have satisfied the requirements of disclosure and consent in order to dispel an appearance of impropriety.

A much clearer duty of disclosure and consent emerged, however, when it became obvious to respondent that the deal between Anderson and Dunn had turned sour and that, therefore, their interests were on a collision course. At that time, respondent should have recognized the existence of a conflict of interest and should have withdrawn from the representation of both. Instead, he continued to represent Anderson against Dunn, including giving advice to Anderson to send a letter

to Dunn with an offer to purchase Dunn's interests in LLV.[5]

More seriously, at respondent's instruction, Anderson inserted his name on the blank stock certificate, thereby making himself the sole shareholder of LLV. Despite respondent's protestations to the contrary, the record is clear; respondent knew that the certificate had originally been endorsed in blank, as shown by O'Brien's two letters to him in that regard. And even if respondent did not know initially that the certificate was blank, he admitted that, when Anderson contacted him on his return from Florida, he advised Anderson not to leave the certificate blank. Indeed, the next time the stock certificate surfaced it showed Anderson's name only, instead of both Anderson's and Dunn's. Once again, respondent's favoritism toward Anderson became evident. In fact, it was the presence of Anderson's name only on the stock certificate that empowered Anderson to call a special meeting of shareholders on July 2, 1991, at respondent's office. As noted earlier, during that meeting, at which only the Andersons appeared, the Andersons and Dunn were elected directors of LLV, whereupon Anderson was elected president, Dunn vice-president and Joan Anderson secretary-treasurer. All of these actions were taken in Dunn's absence, notwithstanding that Dunn notified Joan Anderson that he was unable to appear at the meeting because of his lawyer's unavailability.

Respondent contended that there was no impropriety in the endorsement of the stock certificate in favor of Anderson, inasmuch as the signed buy-sell agreement provided for — and, therefore, guaranteed — a fifty/fifty ownership in LLV by Dunn and Anderson. Although respondent might be correct, the endorsement of Anderson's name only on the certificate posed certain risks, as anything could have happened to challenge the validity of the buy-sell agreement.

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[5] Although the $25,000 offer was $10,000 less than what Dunn had paid for his one-half share of the "Sashay," there is no evidence that this was done on respondent's advice or suggestion.

And even if such challenge were spurious, Dunn could still be exposed to unnecessary litigation.

All in all, respondent's conduct after the falling-out between Anderson and Dunn was fraught with conflict-of-interest improprieties. There is nothing in the record indicating that, after the conflict became clear to everyone, respondent obtained Anderson's consent to the continued representation. As the former attorney for Dunn in a substantially related matter, respondent had an obligation to disclose to Anderson the circumstances of the continuing representation and to obtain his approval to such representation.

The Board rejected respondent's contention that he was representing only LLV, after the parties' rift. In the first place, it is questionable whether Anderson had authority to retain respondent as attorney for the corporation. If respondent is correct that he was retained when Anderson called him as soon as he returned from Florida, then Anderson's name might not have yet been on the stock certificate (chances are it was not), Anderson had not yet been elected president of LLV and, accordingly, Dunn, too, had to authorize respondent's retention as corporate counsel, as each individual held an equal number of LLV shares. More significantly, however, respondent's claim that he was acting solely as attorney for LLV, and not for the parties, was clearly an afterthought designed to circumvent the requirements of *RPC* 1.7. Although it is true that a corporation may have a life of its own as a real being, the record makes it clear that, in this case, respondent was unquestionably representing Anderson's interests only.

In short, respondent knowingly immersed himself in a conflict-of-interest situation, particularly when he continued to represent Anderson after Anderson's and Dunn's discord, in violation of *RPC* 1.7.

In addition, respondent's representation of Anderson in the same matter in which he had

represented Dunn, after their interests had become materially adverse violated *RPC* 1.9(a)(1) (conflict of interest: former client). Although respondent was not charged with a violation of that rule, the Board deemed the complaint amended to conform to the proofs. *See In re Logan*, 70 *N.J.* 222, 223 (1976).

As to the alleged violation of *RPC* 8.4(c), there is insufficient evidence that respondent and Anderson participated in a scheme to deprive Dunn of his shares of LLV when respondent counseled Anderson to put his name on the stock certificate. As respondent correctly pointed out, the parties' interests in LLV had already been spelled out in the executed buy-sell agreement; Anderson could not have stripped Dunn of his shares because of the existence of the buy-sell agreement.

Nevertheless, the record allows the conclusion that respondent showed favoritism toward Anderson at every step of the way after Anderson's squabble with Dunn: (1) respondent told Anderson to write his name on the stock certificate; (2) respondent advised him to call a special meeting of shareholders; (3) respondent housed the meeting at his office; (4) respondent proceeded with the meeting in Dunn's absence, although aware that Dunn was not present because of a prior commitment by his attorney; (5) respondent counseled Anderson to elect a Board of Directors and to make Anderson president of LLV and (6) respondent reissued new stock, awarding the Andersons a majority of shares. The latter was improper because, even if there was an agreement to give Joan Anderson one share — and it appears that there was — respondent should have first consulted with Dunn, particularly because of the premature distribution of the one share to Joan Anderson; she testified that she was to be given one share three years from the date of purchase of the boat.

The Board is reluctant, however, to call respondent's foregoing actions dishonest. Rather, his outright partiality towards Anderson is subsumed in the overall conflict of interest. Accordingly,

the allegation of a violation of *RPC* 8.4 (c) is dismissed.

The only remaining issue is the appropriate measure of discipline. Cases dealing with conflict-of-interest situations ordinarily result in a reprimand, absent serious harm to the client. *In re Berkowitz*, 136 *N.J.* 134 (1994). Here, fortuitously no party suffered any harm as a result of respondent's ethics infractions. Accordingly, the Board unanimously determined that a reprimand is adequate discipline for respondent's violation of *RPC* 1.5(b), *RPC* 1.7 and *RPC* 1.9(a)(1). One member did not participate.

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

Dated: 11/19/98

By: _____
Lee M. Hymerling
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Jeffrey Schnepper
Docket No. DRB 97-287

Argued: November 20, 1997

Decided: November 19, 1998

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			x				
Zazzali			x				
Brody			x				
Cole							
Lolla			x				
Maudsley			x				
Peterson							x
Schwartz			x				
Thompson			x				
Total:			8				1

By Robyn M. Hill 11/23/98
Robyn M. Hill
Chief Counsel