SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 97-133

IN THE MATTER OF :
F. CRAIG LAROCCA :
AN ATTORNEY AT LAW :

Decision

Argued: July 17, 1997

Decided: October 15, 1997

Michael A. Fusco appeared on behalf of the District I Ethics Committee.

Carl D. Poplar appeared on behalf of respondent.

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 filed by the District I Ethics Committee ("DEC"). Each count of the three-count complaint charged respondent with violations of RPC 1.7(a) (representing clients with adverse interests), RPC 1.7(b) (representing a client when that representation may be materially limited by responsibilities to another client, third person or by lawyer's own interests), RPC 1.8(a) (entering into a business transaction with a client or acquiring pecuniary interest adverse to

a client) and RPC 1.8(f) (conditions for accepting compensation for representing client from someone other than the client).

Respondent was admitted to the New Jersey bar in 1977. He maintains a law office in Ventnor, New Jersey. Respondent has no prior ethics history.

* * *

At the DEC hearing, the presenter and respondent entered into a Stipulation of Facts. According to the stipulation, respondent was contacted in 1994 by James Turtle, a certified public accountant, seeking investors for a real estate development project in New Gretna, Little Egg Harbor Township, Ocean County, New Jersey. Respondent was acquainted with Turtle through a mutual client. Although at first respondent was not interested in the project, he met with Turtle and subsequently with the real estate developer, Joseph Paggi. Respondent visited the real estate site in March 1994. In order to learn more about Paggi's reputation, respondent contacted numerous people, including lenders, the municipal attorney for the Little Egg Harbor Township, the president of Fidelcor Bank, the owner of the property and a representative from Congress Title Company, the company that issued title insurance for Paggi's prior real estate developments.

Although Turtle and Paggi wanted the investment structured so that Paggi would own the property, respondent insisted that an entity known as New Gretna Realty Trust be created, comprised of the investors. That entity would sell the building lots to Paggi as they were

developed. Respondent obtained twelve investors, including clients, his law partners and himself, who contributed a total of approximately $500,000 toward the real estate project. According to the complaint, respondent procured sixty-one percent of the funds necessary for the venture. In addition, respondent performed legal services, including the preparation of the documents forming the New Gretna Realty Trust and the documents for the real estate closing, which occurred on March 31, 1994. Although Paggi paid respondent's legal fees, respondent did not represent Paggi and there was no attorney-client relationship between them. The investors paid nothing for legal fees.[1]

Due to changes in the tax laws, in December 1994 the New Gretna Realty Trust was changed from a partnership to a limited liability corporation known as New Gretna Realty, L.L.C. Ownership in the property was transferred, in that all of the investors were principals in this new business entity.

From March through July 1995, Turtle sent respondent the following payments as a "finder's fee" for obtaining the other investors:

| | |
|---|---|
| March 13, 1995 | $14,887 |
| May 5, 1995 | 4,962 |
| June 5, 1995 | 9,924 |
| June 15, 1995 | 6,212 |
| July 24, 1995 | 3,750 |
| Total | $39,735 |

[1] Although the stipulation does not address this issue, it appears that Paggi paid respondent's legal fees for services performed for the investors as a means of accommodating the interest of all parties, i.e., the successful and profitable development of the property.

Respondent did not have advance notice that he would receive the fees. However, he failed to disclose to the other investors his receipt of the fees.

The New Gretna real estate transaction seemed to be proceeding successfully. As the lots were sold, the investors started receiving payments proportionately to their investments.

Paggi also discussed the possibility of other real estate investments with respondent. On these occasions, Paggi told respondent in advance that he would receive finder's fees for obtaining investors. For a real estate development project in Medford, New Jersey, respondent obtained three investors, who contributed the following amounts: Daniel Skubick, $301,778.67; Eileen McColgan, $150,000; and Elizabeth LaRocca (respondent's mother), $55,000, for a total of $506,778.67. Although respondent received a finder's fee of $15,000, he did not so inform the investors.

Similarly, respondent secured the following investors for Paggi to develop real estate in Shamong Township, New Jersey: David Arber, $50,000; Bruce Sussman, $40,000; Neil Mermelstein, $25,000; and Susan McQuirnes, $20,000, for a total of $135,000. Again, respondent failed to notify the investors of his receipt of a finder's fee. The record does not indicate the amount of the fee received by respondent for the Shamong Township investment, but the complaint refers to a fee of "four points."

In August 1995, Paggi committed suicide. Subsequently, it became known that Paggi's construction business was in poor financial condition. The investors also learned that Paggi had borrowed funds and given a security interest in the New Gretna property, without authority. Paggi was able to obtain these loans despite the requirement that two trustees sign

loan documents. After Paggi's death, respondent discussed with the investors the possibility of suing the lender and the title insurance company based on Paggi's lack of authority to borrow money against the property. In turn, Turtle threatened to reveal to the investors that respondent had received finder's fees for their participation in the real estate project. In light of such threat, respondent determined to disclose the finder's fees to the investors. The investors voiced no objection to respondent's receipt of such fees.

Although it appeared that Paggi was not authorized to obtain any loans individually, the title company and the lender denied any liability for the improper loans made to him. Therefore, the investors decided to sell to Turtle their respective interests in the New Gretna development, rather than become involved in potentially protracted litigation. All of the investors received the return of their principal investments, except respondent, who accepted a note from Turtle for $39,000.[2]

With respect to the Medford Township property, respondent, at his own expense, hired a law firm to file a foreclosure proceeding. A final judgment of foreclosure was entered on August 29, 1996. The investors in the Medford Township property still have not received the return of their principal. A December 1994 appraisal estimated the market value of the property as $10,000 to $15,000 per acre, without improvements, and $75,000 to $125,000 per lot, if improved. The property consists of 20.6 acres that could be subdivided into five lots. Thus, pursuant to this appraisal, as of December 1994 the property was worth between

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[2] Respondent had invested $60,000. He received $21,000 from Turtle plus the note for $39,000, in addition to the $39,000 he had received as finder's fees.

$206,000 and $309,000 in its raw state and between $375,000 and $625,000 if five building lots were approved and improved. An August 5, 1996 appraisal by a realtor indicated that, if the property were divided into five lots and improved, the lots would be worth between $100,000 and $125,000 (or a total of between $500,000 and $625,000). The three investors contributed a total of $506,778.67 toward the Medford property. Because the property has not been developed and sold to date, it is not known whether the investors will be made whole.

According to an August 5, 1996 appraisal, the Shamong Township property is worth between $190,000 and $220,000 in its present condition. Four investors contributed a total of $135,000. Thus, it appears that they will ultimately be made whole.

At the ethics hearing, the stipulation and documents about each investment were admitted as joint exhibits. Respondent and five of the investors, including respondent's mother, testified at the hearing. The essence of the investors' testimony was that, although at the time of their investments they were not aware that respondent would be receiving a finder's fee, they did not have any objection or complaint about his receipt of the fee.

* * *

The DEC found clear and convincing evidence that respondent violated RPC 1.7(b) and RPC 1.8(a), but not RPC 1.7(a) or RPC 1.8(f), concluding as follows:

> [T]he Panel believes that the Respondent did not violate R.P.C. 1.7(a), but did violate R.P.C. 1.7(b); it also finds that he did not violate R.P.C. 1.8(f), but did violate R.P.C. 1.8(a) because it is the belief of this Panel that Mr. LaRocca did not reasonably believe that his representation would adversely affect the relationship of any of his clients (investors) and he did disclose same to them, even though that disclosure was made in a belated manner, but, the Panel also believes that Mr. LaRocca violated R.P.C. 1.7(b) because his representation of each of the individual investors may have been materially limited by his responsibility to the others, as well as a third person and his own interest, to which the full disclosure of same was not made to his clients, the investors. Likewise, the Panel believes that Mr. LaRocca did violate R.P.C. 1.8(a) because in acquiring a pecuniary interest (the 'finders fees' and 'points') his interest was adverse to the interest of his clients, the investors, and was not fully disclosed and transmitted in writing to his clients nor were his clients advised of the desirability of seeking the advice of independent counsel and, obviously, those clients did not consent in writing thereto. The Panel feels that Mr. LaRocca did not violate R.P.C. 1.8(f) because, again, at least one of the clients testified at the hearing that he was consulted and there was an ultimate disclosure to the clients.

The DEC recommended that respondent receive a reprimand for his misconduct.

* * *

Following a *de novo* review of the record, the Board is satisfied that the DEC's finding of unethical conduct is clearly and convincingly supported by the evidence. There is no doubt that respondent violated RPC 1.8(a) by entering into a business transaction with clients[3] and acquiring a pecuniary interest adverse to the interest of his clients without

[3] As noted earlier, some of the investors were prior or existing clients of respondent. The others became clients when respondent represented the partnership.

following the safeguards set forth in that rule, i.e., making full written disclosure to the client, advising the client of the desirability of seeking and giving a reasonable opportunity to seek the advice of independent counsel of the client's choice and obtaining the client's written consent. Respondent's interest was adverse to those of his clients because the profit earned by the investors diminished in proportion to the amount of the finder's fee paid to respondent. Respondent admitted in the answer to the complaint and in the stipulation that he had not made the requisite disclosure to his clients. In fact, at the ethics hearing respondent's counsel conceded that his client breached RPC 1.8 by asserting as follows:

> I don't have any reservation that if you have a client and you bring a client into a business transaction and you have some involvement in the transaction, there is a duty of disclosure. I think that the rules are clear in that regard and that's a 1.8 violation . . . .
>
> [T89][4]

Thus, the DEC correctly found that respondent violated RPC 1.8(a).

As noted above, the DEC also found that respondent's misconduct was contrary to RPC 1.7(b). That rule prohibits representation of a client if that representation may be materially limited by the lawyer's responsibilities to another client or third person, or by the lawyer's own interests, unless the lawyer reasonably believes that such representation will not be adversely affected and the client consents after full disclosure. Here, respondent's receipt of the finder's fees may have materially limited his representation of his clients, the other investors. Certainly, there was no disclosure to or consent from the clients at the time

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[4] T refers to the transcript of the October 11, 1996 hearing before the DEC.

respondent received the finder's fees. Respondent disclosed that information only when he was faced with the threat by a third-party to inform the investors about the finder's fees. At the hearing of this matter before the Board, respondent's counsel conceded that the DEC's finding of a violation of RPC 1.7(b) was appropriate.

The DEC correctly determined that respondent did not violate RPC 1.7(a), which prohibits the representation of a client if that representation will be directly adverse to another client unless the lawyer reasonably believes that such representation will not adversely affect the relationship with the other client and each client consents after full disclosure. Here, the interests of the clients were not adverse to each other. They all stood in more or less the same position. Prompted by respondent, all had invested in one of three developments secured by real estate.

As noted above, the DEC found no violation of RPC 1.8(f), which provides as follows:

> (f) A lawyer shall not accept compensation for representing a client from one other than the client unless:
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> (1) the client consents after consultation;
> (2) there is no interference with the lawyer's independence of professional judgment or with the lawyer-client relationship; and
> (3) information relating to representation of a client is protected as required by RPC 1.6.

Here, respondent accepted attorney's fees from a third-party, Paggi. However, at the ethics hearing, Daniel L. Skubick, who had invested approximately $300,000 in the Medford Township property, testified as follows:

> [S]o as part of that whole process, I understood that there would be a mortgage, et cetera, and so I asked Mr. LaRocca are -- there obviously would be fees, et cetera, involved in setting this up.... So I, you know, asked Mr. LaRocca who would be paying those fees. I was concerned that it would be coming out of my $300,000, and then he explained that he was in this relationship with this developer and the developer was going to pay the legal costs and there would be some kind of a fee to Mr. LaRocca for putting together this deal. My concern was that none of that came out of my $300,000, and so that was basically how I knew that there was some money going to Mr. LaRocca at that point in time.
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> [T42-43]

The DEC noted that at least one of the clients testified at the ethics hearing that he had been consulted and that ultimately there was disclosure to the clients. Although there is nothing in the record to suggest that respondent consulted all of the clients about Paggi's payment of attorney's fees, there is no evidence of interference with respondent's independence or of any failure by respondent to protect information relating to the representation, as provided in RPC 1.8(f). Thus, the DEC correctly dismissed this charge.

Generally, in cases involving a conflict of interest, absent egregious circumstances or serious economic injury to clients, a reprimand constitutes appropriate discipline. In re Berkowitz 136 N.J. 134, 148 (1994). In Berkowitz, two attorneys from the same firm were reprimanded for violating RPC 1.7 when one attorney was corporate counsel for a business that was threatened by a proposed change in a zoning ordinance while the second attorney represented and had a financial interest in the developer that sought the zoning change.

In contrast, in In re Guidone, 139 N.J. 272 (1994), the attorney received a three-month suspension for his misconduct in representing a club that was selling a tract of land, while

he had an undisclosed personal interest in the partnership that was buying the property. The Court noted that the attorney's interest in the matter was pecuniary, adverse to his client's interest, and concealed for a long period of time. In the instant case, while respondent did have a pecuniary interest in the matter, his interest was not adverse to his clients' interests, and he ultimately disclosed that interest.

Here, the record indicates that respondent's clients have not suffered any economic injury to date, although the matter is not yet resolved. Significantly, however, any economic injury that the clients may ultimately suffer will not be the result of respondent's violations of the Rules of Professional Conduct, but of the circumstances surrounding the investment itself, such as Paggi's unauthorized loans.

In light of the foregoing, the Board unanimously determined that a reprimand is sufficient discipline for respondent's infractions.

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

Dated: 10/15/97

LEE M. HYMERLING
Chair
Disciplinary Review Board

*SUPREME COURT OF NEW JERSEY*

## *DISCIPLINARY REVIEW BOARD*
## *VOTING RECORD*

**In the Matter of F. Craig LaRocca**
**Docket No. DRB 97-133**

**Argued: July 17, 1997**

**Decided: October 15, 1997**

**Disposition: Reprimand**

| Members | Disbar | Suspension | Reprimand | Admonition | Dismiss | Disqualified | Did not Participate |
|---|---|---|---|---|---|---|---|
| Hymerling | | | x | | | | |
| Zazzali | | | x | | | | |
| Brody | | | x | | | | |
| Cole | | | x | | | | |
| Lolla | | | x | | | | |
| Maudsley | | | x | | | | |
| Peterson | | | x | | | | |
| Schwartz | | | x | | | | |
| Thompson | | | x | | | | |
| **Total:** | | | 9 | | | | |

Robyn M. Hill 11/6/97
Robyn M. Hill
Chief Counsel