SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-121
District Docket No. XII-2014-0001E

IN THE MATTER OF	:	
TORKWASE YEJIDE SEKOU	:	
AN ATTORNEY AT LAW	:	Dissent

Argued: September 15, 2016

Decided: December 20, 2016

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

A five-member Board majority recommends that respondent be censured while two members voted to suspend her for three months. I dissent because I do not find clear and convincing evidence of any ethics violation at all and, accordingly, I recommend dismissal of the complaint.

This disciplinary matter grows out of a tragedy and a personal dispute, unrelated in any way to respondent's practice of law. On September 15, 2013, Bonita Spence hanged herself in her West Orange, New Jersey condominium, located within a gated community. Spence had been a close friend of respondent's for over twenty-five years and, for a substantial period, the two lived together in a romantic relationship. Although the romance had ended about

five years before Spence's death, they remained close and shared a co-guardianship of respondent's 14-year-old niece, L.S., whom respondent had adopted. Indeed, Spence had known L.S. since she was eighteen months old and was L.S.'s godmother. L.S. lived with her about half the time, had a room in her home and kept clothes and other belongings there.

The closeness of the continuing friendship between respondent and Spence was described by respondent:

> We're talking about someone that's been my friend for more than 25 years. I mean we've traveled the world together. I watched her mother die. She watched my mother die. Her stepfather died. We've had many Christmases together. We spent every Thanksgiving in the Caribbean for ten years straight .... [W]e had a long time relationship. [1T175].[1]

Respondent learned of the suicide at about 10:15 p.m. on the night of Spence's death when she spoke to a mutual friend who had discovered the body. Immediately after this conversation, respondent called Spence's aunts, Alma and Mary Dobson, Spence's only living relatives known to respondent. Because Alma was ill, she asked respondent to "get [Spence's] things together"(1T202) and make funeral arrangements. Following Alma's request, respondent went the next day to the surrogate's court to discuss administering the estate (Exh. C-1 ¶¶ 10, 11, 17; Statement, part

[1] "1T" and "2T" refer respectively to the transcripts of the November 24, 2015 and December 3, 2015 DEC hearings.

of Verified Answer). Also on September 16, in the morning, another friend, attorney Denelle Waynick, drove respondent to Spence's condo. Waynick testified that she drove because respondent was "very emotional and upset." (2T21). At the gate to the complex, respondent mentioned L.S.'s name because that was the name that "everybody used" to enter the complex including her sister. Proceeding to the housing office, respondent gave her own name, address and telephone number and advised that she would take care of the apartment and clean "as much as I can." She also explained that her daughter, L.S., resides there and she needed to get some of L.S.'s things. In evidence was a letter from Erin O'Reilly, the property manager for the condo community at the time of the suicide, who wrote:

> I was notified of Bonita's passing by [respondent], who came up to my office. Since Tezeka [sic] was on Bonita's "allowed visitors" list, our gatehouse attendant granted Tezeka [sic] access to the community.
>
> [Exhibit R4.]

Respondent went to the condo three times on September 16, 2013, the day after the suicide. The first time, she did not enter the condo because the key that was kept hidden outside had been taken by the police when they removed the body. The second time, respondent entered and took clothes and an iPad belonging to L.S. that Spence had bought for L.S., Spence's pocketbook containing

credit cards, three checks, and a box of photographs. On her third visit, she did not remove anything but cleaned blood that remained after the suicide. She also moved Spence's car to her driveway but never again drove it. Later that week, respondent entered Spence's condo for the last time, bringing a truck and helpers to take certain furniture that she put first in her living room, later moving some of it to her garage because her living room was too crowded with the extra furniture. Waynick drove her to Spence's condo each time she went.

Respondent spoke to the surrogate's court after removing Spence's things and was told, "you better be sure [the things you took] are well taken care of and nothing happens to them." Respondent did nothing secretly or suggesting that she was attempting to hide her actions.

Grievant, Cathy Rabb, is Spence's half-sister. Despite respondent's long, close relationship with Spence, respondent had never heard of Rabb before Spence died. Rabb herself testified that Spence "had her life and I had mine" and that, over the years, she saw Spence only at funerals and weddings and never visited Spence's home. Rabb first called respondent on October 15, 2013, a month after Spence's death.

Neither Rabb nor Archie Spence, Spence's father from whom Spence was estranged, made any effort to pick up Spence's body or

to plan the funeral. In fact, Spence's father was hostile to respondent the only time that the two spoke (the day after Spence's death), asking if she was "one of those lesbians" and yelling, "you lesbian[s] killed my daughter." With no family member willing to plan or pay for the funeral, respondent did so. She also delivered the eulogy.

On October 23, 2013, Rabb went to respondent's home to pick up Spence's belongings. During a conversation there, described by Rabb as "cordial," respondent gave her Spence's credit cards, three checks (including one that Spence had endorsed), gift cards, pictures of Spence, the car, and a packet of keys. The two signed a document (Exhibit C-7), listing everything she gave to Rabb. Rabb testified that respondent "was crying like she was at the funeral" when handing her pictures of Spence. Respondent also showed Rabb furniture in the garage. Rabb's cousin, Pamela Elliot, was present during this entire visit.

Two weeks later, Rabb returned with a truck to pick up the furniture in the garage. Among the furniture she took were a couch and chaise belonging to respondent, rather than those that had been Spence's. Rabb did not take Spence's two televisions because, she testified, she did not want that "old stuff."

While the above facts are undisputed, there are some areas of disagreement or inconsistency:

(1) Although respondent consistently said from the start of the ethics investigation that she entered Spence's condo on September 16, 2013 and removed the above-mentioned items, her statements varied as to what key she used to enter on September 16, her daughter's key or one kept in Spence's unlocked car;

(2) There was conflicting testimony about when respondent moved Spence's car, whether on September 16, 17, or 18, 2013;

(3) Respondent's and Rabb's testimony differ as to whether respondent told Rabb that some furniture in her living room belonged to Spence, as respondent testified, or whether, as Rabb testified, respondent told her that all furniture in the garage was Spence's and Rabb learned otherwise only when Whitney Fisher, Spence's more recent live-in friend, so advised her. Respondent testified that she told Rabb by telephone and also when Rabb came to her house which furniture was hers and which furniture had belonged to Spence, let Rabb choose which furniture to take, and that Rabb opted to take the furniture in the garage because it was easier to remove. Explaining why she gave Rabb this option, respondent testified:

> [W]hen I spoke to [Rabb] on the phone, she had told me a long story about her house burning down, her losing everything she had. She was in a fire.... And the reason why I'm saying that because when we got down to it... I said you could take whatever you want.... Before she got there I said I have the couch and chase [sic] in the house so that it would be

> taken care of and everything else is in the garage.... [W]e went out to the garage and Dalton went to the garage not just me, me, her and her cousin.... I said this is my furniture. I actually uncovered the furniture and she asked did it matter, would it be easier to take what's here when I bring the truck. I said you know what, it doesn't really matter to me. At that point it was just material things. I wasn't trying to be deceiving because in reality my furniture is more expensive.
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> [1T211-13]

(4) Testimony was conflicting as to whether respondent put four of her own dining room chairs in the garage and misled Rabb into taking them instead of four chairs that belonged to Spence. Respondent testified that the chairs in the garage that Rabb took were wood with leather seats and had belonged to Spence and that she herself had metal dining room chairs. However, Whitney Fisher and Michelle Grazul testified that they did not recognize pictures of the chairs taken by Rabb as Spence's.

(5) there are inconsistent statements in the record as to whether respondent took Spence's iPad or took only L.S.'s iPad.

The Ethics Violations Found by the Majority.

Apparently believing that respondent set out to steal some used furniture and an iPad from her deceased friend, the majority finds a nefarious motive behind many minor, and I think immaterial, variations in respondent's statements and testimony, leading it to find that respondent engaged in dishonest and fraudulent

conduct. Thus, the majority concludes that respondent violated two RPCs: **(1)** RPC 8.1(a)(*knowingly* making a false statement of *material* fact to ethics authorities); and **(2)** RPC 8.4(c)(engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

1. Violation of RPC 8.1(a)

It is difficult to discern a knowing material falsity in respondent's statements made during this ethics investigation, and certainly none proven by clear and convincing evidence.

a. The key. Respondent openly and consistently said that she entered Spence's condo on September 16, 2013, the day after the suicide, and took various items. Surely, varying statements about the key used to enter are not material. Moreover, it is undisputed that when she entered the condo on September 16, respondent was suffering great emotional turmoil, having been told less than twelve hours before that her long-time close friend had violently killed herself. Poor memory borne of emotional upset and passage of time easily accounts for variations in her statements about this immaterial fact.

b. The car. Likewise, respondent openly and consistently said that she moved Spence's car to her own driveway where she left it parked until Rabb took it. Whether respondent moved the car on September 16, 17, or 18 is immaterial and is something there was no reason for her to falsify.

c. The iPad. Respondent testified consistently that she never had Spence's iPad, only took L.S.'s, does not know what happened to Spence's (1T160-61; 222), and that her statement appended to her Verified Answer saying that she kept an "iPad" referred to L.S.'s iPad. (1T161). Her testimony seems intended to correct an admission in her Verified Answer that she took/kept "Deceased's iPad," one of several items listed in the corresponding paragraph in the complaint. Although Rabb testified that respondent told her she was keeping Spence's iPad, there is no evidence that respondent needed, wanted, or ever used an iPad belonging to Spence. Respondent had her own iPad. As she testified, "we all" had iPads. (1T222). If respondent had used Spence's iPad after her death, evidence of such use could have been produced but was not. At best, statements about iPads are conflicting and confusing and are not clear and convincing evidence of intentional wrongdoing.

d. The furniture in respondent's garage. The record also contains no clear and convincing evidence that respondent's statements to ethics authorities about what she told Rabb about furniture in her garage were false. Her own statements about the furniture were consistent, including those to the ethics investigator and her testimony at the ethics hearing. Rabb's contrary testimony alone is not, in my opinion, clear and

convincing evidence of falsity of respondent's statements nor does it convince me that respondent schemed and lied to keep these few pieces of used furniture.

For example, there is no evidence supporting the theory that Spence's couch and chaise were more expensive than respondent's. The presenter seemed to think that describing Spence's furniture as "leather" proved its great worth and provided a motive for respondent to want to steal it. But there are many grades of leather, not all costing a great deal and, without contradiction, respondent described her own couch as "buck suede," "not fake" suede, and testified that she thought it was more expensive than Spence's. (1T214). Nor was any plausible financial motive shown where respondent immediately turned over Spence's other belongings: endorsed checks, credit cards, car, furniture, and where, at her own expense, paid for Spence's funeral. The presenter could have called as a witness Rabb's cousin to corroborate (or not) Rabb's account of the discussion on October 23rd, since she was present with Rabb and respondent during the entire visit, but she did not do so.

In short, this record lacks clear and convincing evidence of knowing, material false statements to ethics authorities.

2. Violation of RPC 8.4(c)

The majority says (at p. 26) that three statements by respondent violated RPC 8.4(c) (engag[ing] in conduct involving dishonesty, fraud, deceit or misrepresentation):

> (1) representing herself as L.S. at the gate to Spence's community on September 16, 2013, and telling the management office that she was a close family member of Spence in order to gain access to Spence's condominium;
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> (2) telling Rabb that two keys among those respondent gave her were keys to Spence's condo, contrary to Rabb's testimony that none of the keys she was given fit the condo door; and
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> (3) telling Rabb that certain furniture was Spence's and, by her silence, letting Rabb leave with that furniture.

First, there was no misrepresentation as to respondent's identity either at the gate to the condominium complex or at the housing office. Respondent, the only person to testify about her entry to the complex on September 16, testified candidly that she mentioned L.S.'s name at the gate because that was the name that "everybody used" to enter the complex, mentioning her sister as one such person who had in the past gained access that way. After entering the gate, respondent went to the housing office where she stated that she was a close family member of Spence who had died, that her daughter resides there, and "I gave them my name, my address and my telephone number." Regardless, the housing office already had respondent on their list of "allowed visitors," as stated in a letter from Erin O'Reilly, the property manager, who wrote that, therefore, "our gatehouse attendant granted

[respondent] access to the community." Thus, no material misrepresentation was made nor was any needed for respondent to gain entry to the condo complex.

Second, there is no clear and convincing evidence that respondent intended to mislead about the keys she gave to Rabb. She certainly had no motive to do so. It is undisputed that respondent never again entered Spence's condo after removing the furniture a few days after Spence's death. Hence, respondent had no reason not to give the condo key to Rabb on October 23rd, well after her final entry, and if that key was not among those she turned over, it was likely an oversight, not benefiting her.

Third, in addition to the above discussion about Rabb's taking respondent's sofa, chaise and dining chairs instead of comparable items that had belonged to Spence, is the undisputed fact that the surrogate's office instructed respondent to keep Spence's property safe. With that instruction in mind and finding her living room too crowded with both her own and Spence's furniture, respondent moved some of her own furniture to the garage. Whether she told Rabb which furniture was Spence's is disputed, without corroboration either way. Still, of the two versions, respondent's seems to me to be the more credible since it strains credulity to believe that Rabb would throw out *all* the furniture she took from respondent, as she testified, upon

supposedly learning that some of it had not been Spence's. After all, Rabb had no relationship at all with her half-sister, refused to pay for the funeral or even claim her body, and so her story about "being duped" and throwing out the furniture because *some* of it was not Spence's rings false. Also, she never asked respondent to exchange the furniture she had taken for that which she claims to have wanted, also detracting from her credibility.

In short, I read this record very differently than does the majority, who seems to think that respondent, an attorney with a 26-year unblemished professional career, engaged in a scheme to steal a few items of used furniture and a used iPad and deliberately lied about certain, I think, immaterial facts occurring at a time of emotional turmoil following the tragic death of a former romantic partner, close friend, and co-guardian of her child. If anything, respondent acted properly and generously in securing Spence's possessions and immediately turning them over when a previously unknown relative appeared, and in planning and paying for Spence's funeral.

Importantly, whatever respondent did, she did openly, evidencing no attempt to hide her entry to Spence's condominium or her removal of various items. She spoke to Spence's aunts and to the surrogate's court and went with a friend when she entered Spence's dwelling. She parked Spence's car openly in her driveway

and discussed Spence's furniture with Rabb in the presence of Rabb's cousin and Dalton Bramwell of the Public Defender's Office.[2]

The disputed facts discussed above should be read not only against respondent's unblemished professional record and the testimony about her good character but also the fact that none of these events relate to any client matter or respondent's professional work, but concern only a personal tragedy.

For the majority opinion to make sense, one must conclude that respondent set out to steal some relatively inexpensive belongings of her close friend and prior lover and that minor inconsistencies in her statements were part of a calculated,

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[2] The majority's statement (at p. 25) that respondent falsely stated that Bramwell was privy to the conversation about furniture is itself false. Bramwell testified that he was present when respondent spoke to Rabb about Spence's furniture but did not pay much attention and did not remember the specifics of what was said. Thus, he was "privy" to it but did not remember its details. This is but one example of the majority's inexplicably misconstruing conflicting evidence against respondent rather than finding a lack of clear and convincing evidence due to the conflict.

Another example of misconstrued evidence made much of by the majority (at p. 23) is its emphasis on respondent's admission that she did not have permission "from a representative of the estate to enter Spence's premises." But respondent entered the day after Spence's death when no estate administration had begun, no such "representative" yet existed, and respondent knew only of Aunt Alma whom she had contacted and who asked her to take care of things. Thus, this "admission" is not incriminating but is a simple statement of obvious fact since no estate representative had by then been appointed.

intentional scheme to defraud, a conclusion for which I see no clear and convincing evidence.

Unlike this case, every case cited by the majority (at pp. 28-30) to support discipline for violations of RPC 8.1(a) and RPC 8.4(c), where misstatements were made to ethics authorities or third parties, are cases arising out of an attorney's law practice. E.g., In re DeSeno, 205 N.J. 91 (2011) (misrepresentations to district ethics committee about filing date of a complaint on the client's behalf); In re Sunberg, 156 N.J. 396 (1998) (attorney lied to OAE during investigation of attorney's fabrication of an arbitration award to mislead his partner); In re Powell, 148 N.J. 393 (1997) (attorney misrepresented to DEC during its investigation of a client's grievance that his associate had filed a motion when he had not); In re Otlowski, 220 N.J. 217 (2015) (attorney misrepresented to a lender of his client and the OAE that funds belonging to lender deposited into the attorney's trust account were frozen by court order, when they actually had been disbursed); In re Schroll, 213 N.J. 391 (2013) (attorney misrepresented to DEC secretary that a personal injury matter was pending when he knew the complaint had been dismissed).

While New Jersey attorneys are often properly disciplined after being convicted of a crime unrelated to their professional

work, attorneys are rarely, if at all, disciplined for violations of RPC 8.4(c) based on misstatements unrelated to their work as lawyers where no crime has been charged. Indeed, I could find no such case and the majority cites none. Here, not only has no crime been charged but none realistically could be because evidence of *intentional* wrongdoing meeting even the clear-and-convincing standard is lacking.

In short, this is no more than a family or personal dispute that in my opinion has been litigated inappropriately in an ethics forum because one of the disputants happens to be an attorney. I would dismiss this complaint in its entirety.

Disciplinary Review Board
Anne C. Singer

By: Ellen A. Brodsky
Ellen A. Brodsky
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