SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-338
District Docket No. XIV-2016-0322E

IN THE MATTER OF	:
ROBERT GEOFFREY BRODERICK	:
AN ATTORNEY AT LAW	:

Decision

Argued: March 15, 2018

Decided: June 8, 2018

Al Garcia appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se, via telephone.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), following respondent's one-year suspension in Connecticut, for his violation of the Connecticut equivalent of New Jersey RPC 1.17(c)(2) (improper sale of a law office)[1] and RPC 8.4(c)

[1] The OAE inadvertently cited RPC 1.17(c)(3) in its brief. That subsection applies specifically to the purchaser of a law firm – not a seller.

(conduct involving dishonesty, fraud, deceit or misrepresentation).

The OAE seeks a six-month suspension. Although respondent does not specifically dispute the OAE's recommendation, he requests that we consider a shorter duration. For the reasons stated below, we determine to impose a censure.

Respondent was admitted to the New Jersey and Connecticut bars in 2010.[2] He has no history of discipline in New Jersey. According to the Central Attorney Management System (CAMS), as of February 28, 2018, respondent has been retired from the practice of law in New Jersey.

On February 25, 2016, Disciplinary Counsel for the Connecticut Statewide Grievance Committee (CSGC) filed a presentment, charging respondent with four counts of violating Rules 1.17(c)(1), 1.17(c)(2) and 8.4(3) of the Connecticut Lawyers' Rules of Professional Conduct (CLRPC). Prior thereto, on January 29, 2016, respondent submitted an affidavit, admitting the charged violations.

Specifically, respondent admitted that he failed to give four separate clients written notice of the sale of his law firm, failed to inform them of their right to retain other

[2] Respondent appears to be licensed in the District of Columbia and Florida as well.

counsel, and failed to inform them that they could take possession of their files before the sale of his firm, all in violation of CLRPC 1.17(c)(1) and (2). He also admitted that he violated CLRPC 8.4(3) when those four clients retained him for mortgage relief services, in violation of state and federal law.

On August 1, 2014, respondent's law firm, The Resolution Law Group, and its successor, the Berger Law Group, were placed in receivership by the United States District Court for the Middle District of Florida – Tampa Division (USFLA). That action was based on allegations by the Florida and Connecticut Attorneys General that both firms had generated millions of dollars in illegal upfront fees by convincing consumers to pay to be included as plaintiffs in "mass-joinder" lawsuits against mortgage lenders. Respondent and his partners promised that the litigation would induce banks to give modifications or other types of mortgage relief. They charged individuals a $6,000 upfront "investigation fee" and a $500 per month maintenance fee.

Respondent's conduct violated Chapter 501, Part II, Florida Statutes and Conn. Gen. Stat., Chapter 735a (deceptive trade practices), and the federal Mortgage Assistance Relief Services Rule (MARS), 12 C.F.R. Part 1015 (2012) (Regulation O). The record does not disclose the resolution of the federal matter.

On August 20, 2016, respondent was suspended for one year in Connecticut. On September 1, 2016, the District of Columbia Court of Appeals entered an order suspending respondent from the practice of law for a period of one year, *nunc pro tunc* to August 7, 2016.

The Connecticut and the District of Columbia suspensions were based on respondent's violations of CLRPC 1.17(c)(1), 1.17(c)(2) and 8.4(3). Respondent's unethical conduct in Connecticut equates to violations of New Jersey RPC 1.17(c)(2) and RPC 8.4(c).

The OAE argued that, in cases involving mortgage modification and conduct involving misrepresentation, fraud, and deceit with regard to mortgage modification and collecting fees associated therewith, the appropriate discipline is a six-month suspension. In support of its position, the OAE cited In re Velahos, 225 N.J. 165 (2016) (Velahos II). In that case, an attorney was suspended for six months for fraudulently collecting advanced fees in relation to the representation of clients in mortgage modification matters, in violation of RPC 1.15(a) and RPC 8.4(c) and (d), as well as for numerous other RPC violations.

In mitigation, the OAE noted that respondent cooperated with the ethics authorities in Connecticut and the District of Columbia.

* * *

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
>
> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
>
> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
>
> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
>
> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

Subsection (E) applies in this matter because the unethical conduct warrants substantially different discipline.

"[A] final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." R. 1:20-14(a)(5). Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

In Connecticut, respondent admitted violating CLRPC 1.17(c)(1) and (2), which are fully encompassed within New Jersey's RPC 1.17(c)(2). New Jersey RPC 1.17(c) states that, among the conditions that must be satisfied for the proper sale of a law practice:

> [w]ritten notice [must be] given to each of the seller's clients stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of the client's file and property; and that if no response to the notice is received within sixty days of the sending of such notice, or in the event the client's rights would be prejudiced by a failure to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client.

RPC 1.17(c)(2) adds that:

> [n]ot less than sixty days prior to the transfer the seller shall cause the notice to be given to the client and the seller shall obtain the written consent of the client prior to the transfer, provided that such consent shall be

> presumed if no response to the notice is received within sixty days of the date of the sending of such notice to the client's last known address as shown on the records of the seller.

Respondent violated RPC 1.17(c)(2) by failing to provide proper notice to his four clients regarding the sale of his law firm and their rights flowing from that. The discipline imposed on attorneys who violate RPC 1.17, either as sellers or purchasers of a law practice, ranges from an admonition to a three-month suspension. See, e.g., In the Matter of Mark L. Breitman, DRB 13-382 (February 18, 2014) (admonition imposed on attorney who purchased another attorney's law practice, which included at least fifty-eight active cases, and failed to publish the required notice of sale in the New Jersey Law Journal; a violation of RPC 1.17(c)(3)); In re Fitzgerald, 220 N.J. 570 (2015) (in a consent matter, reprimand imposed on attorney who, knowing that the selling attorneys had not notified the clients ahead of time, purchased a law practice, which included 130 matters, and failed to publish the required notice in the New Jersey Law Journal, violations of RPC 1.17(c)(2) and (3) and RPC 8.4(a); the attorney also charged additional fees to forty-four of the transferred clients, a violation of RPC 1.17(d) and RPC 8.4(a); mitigation considered); and In re (Lawrence) Pinck, 218 N.J. 264 (2014) and In re (Justin) Pinck, 218 N.J. 267 (2014) (three-month suspensions

imposed on partners who, in addition to violating RPC 1.17(c)(2) and RPC 8.4(a), were guilty of gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, and failure to take steps to protect their clients' interests upon termination of the representations; Justin Pinck also made misrepresentations to clients in three matters).

Here, respondent's violation of RPC 1.17(c), on its own, would merit an admonition. However, respondent also has admitted that he made misrepresentations to clients in order to collect upfront fees in a mortgage modification scheme. The OAE argues that his conduct is similar to that of the attorney in Velahos II, 225 N.J. 165, a consent matter. Although that case provides some guidance, it is significantly distinguishable.

Velahos II involved violations of the MARS rule, 12 C.F.R. §1015 (2012). The Federal Trade Commission (FTC) issued the rule in furtherance of its mission to prevent business practices that are anticompetitive, deceptive, or unfair to consumers; to enhance informed consumer choice and public understanding of the competitive process; and to accomplish this without unduly burdening legitimate business activity.

The FTC's rule on advanced fees at section 1015.5 prohibits mortgage relief companies from collecting any fees until they have provided consumers with a written offer from their lender,

along with a written document from the lender describing the changes to the mortgage that would result if the consumer accepts the offer, and the consumer decides the offer is acceptable. On receipt of the offer, the client may reject it and is under no obligation to pay the mortgage relief company. Section 322.7 of MARS specifically exempts attorneys from the advanced fee rule if they are engaged in the private practice of law; are licensed in the state where the consumer or the dwelling is located; and are complying with state laws and regulations governing attorney conduct related to the rule. Section 322.7 of MARS also exempts attorneys who deposit funds received from the consumer prior to performing legal services into a client trust account, and who also comply with all state laws and regulations, including licensing regulations, applicable to client trust accounts.

Velahos operated three companies subject to the FTC's regulations regarding MARS and represented numerous out-of-state clients where he was not licensed as an attorney. In the Matter of Efthemois D. Velahos, DRB 15-409 (March 23, 2016) (slip op. at 4). Further, in New Jersey, he did not meet the exemption provided by Section 1015.7 of MARS because of New Jersey's debt adjuster statute, N.J.S.A. 17:16G-1c(2), which states: "The following persons shall not be deemed debt adjusters: (a) an

attorney-at-law of the State who is not principally engaged as a debt adjuster...." That statute requires a license to conduct mortgage modifications. Id. at 5.

Velahos, however, was principally engaged as a debt adjuster, as his practice was primarily in the area of mortgage loan modifications. Thus, he was not exempt from the licensing requirements. Acting as a debt adjuster without a license is a fourth-degree crime in the State of New Jersey, in violation of N.J.S.A. 2C:21-19. Therefore, Velahos was found to have violated RPC 8.4(b). Id. at 5.

Also in violation of MARS, Velahos did not provide clients with a written offer from their lender describing the changes to the mortgage that would result if the consumer accepted the offer, which they would have an opportunity to accept or decline prior to the payment of a fee. Like respondent, Velahos required and accepted upfront legal fees. Specifically, over the course of two years, Velahos collected or attempted to collect a total of $216,946.92 in illegal advance fees from 117 clients, in violation of MARS. Eighty-six of those clients were New Jersey residents. Id. at 5. The remainder of those clients were residents of states in which Velahos was not licensed to practice. Thus, by taking advance fees, Velahos was found to have violated RPC 1.15(a) and RPC 8.4(c), and, by practicing in

states where he was not authorized to do so, he violated RPC 5.5(a). Moreover, Velahos repeatedly made misrepresentations to his clients and to the public through his advertising and his agreements, and made two distinct misrepresentations to the OAE regarding his alleged relationship with local counsel, and regarding his acceptance of fees from clients in a state where he was not licensed to practice, in violation of RPC 8.4(c).[3]

We determined that Velahos' infractions, in a vacuum, would result generally in a reprimand or a censure. In aggravation, however, we considered the fact that he had received a censure for similar conduct in the past (See In re Velahos, 220 N.J. 108 (2014) (Velahos I); that he committed much of his conduct knowing not only that in some cases it was illegal, but also that, in almost all instances, it was unethical; and that he had engaged in a significant pattern of misrepresentations to his clients. Thus we determined the appropriate quantum of discipline was a six-month suspension. Velahos II, DRB 15-409, slip op. at 9.

Here, respondent was charged with a significantly smaller number of violations than Velahos. Specifically, respondent was

[3] Velahos also was found guilty of violations of RPC 1.15(d); RPC 5.3(a), (b), and (c); RPC 1.16(a); RPC 7.1(a); RPC 7.3(b); RPC 7.4(a); RPC 7.5(e); RPC 8.1(a); and RPC 8.4(a), (b), and (d).

charged with misconduct in four client matters, as opposed to the 117 client matters in Velahos II.[4] Moreover, respondent did not engage in much of the conduct that Velahos committed – such as advertising violations or practicing while ineligible. Finally, respondent was not charged with actual crimes as was Velahos, and has no history of discipline. Thus, although Velahos II is instructive in terms of the nature of the misconduct involved, it is less so in respect of specific discipline urged by the OAE, a six-month suspension. Rather, we consider respondent's misconduct in this matter to be more comparable to the attorney's misconduct in Velahos I, 220 N.J. 108.

In that case, Velahos partnered with his wife, a non-lawyer, to provide loan modification services in at least four client matters. Like respondent in this case, Velahos required an upfront payment to begin the process, in violation of MARS and/or comparable state laws. In two of the matters, he offered

[4] We note that the record indicates that the USFLA entered an order enjoining both respondent's firm and its successor firm from making any representations of mortgage relief, and placed the firm(s) in receivership, based on allegations suggesting widespread deceptive practices extending to a significant amount of potential clients. However, the record discloses neither the final outcome of that federal litigation nor the amount of potential clients involved. Thus, we limit our consideration to respondent's misconduct in the four client matters identified in the OAE's motion.

those services in a jurisdiction where he was not licensed to practice law. In one of those jurisdictions, violation of the state's debt adjusting act was a criminal misdemeanor. Finally, in all of the matters, respondent allowed his wife to use his law firm's name and address in her communications with the clients. He was found to have violated RPC 5.4(b), RPC 5.5(a), RPC 8.4(b), and RPC 8.4(c). We determined to impose a censure.

Here, respondent failed to inform four clients of the sale of his law firm and of their rights regarding that sale. Moreover, he made misrepresentations to those four clients, inducing them to pay large sums of upfront money for a promised mortgage modification that was never to materialize.

In aggravation, respondent caused economic harm to already vulnerable people. He took advantage of the disadvantaged, and there is nothing in the record to suggest that respondent has repaid those clients or that he has otherwise made them whole.

In mitigation, respondent has no history of discipline and cooperated with ethics authorities. Moreover, it appears that he cooperated with both the Connecticut and Florida Attorneys General in the federal action against him and his firms.

Thus, under the totality of the circumstances and the relevant case law, we determine to impose a censure.

Members Gallipoli and Zmirich voted to impose a one-year suspension, the same discipline imposed in Connecticut.

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
Bonnie C. Frost, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Robert Geoffrey Broderick
Docket No. DRB 17-338

Argued: March 15, 2018

Decided: June 8, 2018

Disposition: Censure

Members	Censure	One-year Suspension
Frost	X	
Baugh	X	
Boyer	X	
Clark	X	
Gallipoli		X
Hoberman	X	
Rivera	X	
Singer	X	
Zmirich		X
Total:	7	2

Ellen A. Brodsky
Chief Counsel