Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-373
District Docket Nos. XIV-2017-0475E
and XIV-2018-0325E

In the Matter of

Anthony J. La Russo

An Attorney at Law

Decision

Decided: July 15, 2019

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

This matter was before us on a certification of the record, filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 1.5(a) (unreasonable fee), RPC 1.5(b) (failure to set forth, in writing, the basis or rate of the fee), RPC 1.7(a)(2) (concurrent conflict of interest), RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6), RPC 1.16(d) (failure to notify the client, in writing, of termination of representation), RPC 4.1(a)(1) (false statement of material fact or law to a third person), RPC 8.1(a) (false statement

of material fact to a disciplinary authority), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

For the reasons set forth below, we recommend respondent's disbarment. In our view, respondent is a serial self-dealer who preys on and exploits the bereaved. Moreover, it is clear that he is unwilling to learn from prior mistakes and, thus, refuses to conform his conduct to that required of a member of the New Jersey bar.

Respondent was admitted to the New Jersey bar in 1969. At the relevant times, he maintained an office for the practice of law in West Caldwell.

In 2007, the Court censured respondent for engaging in conflicts of interest in approximately forty-five matters, from 2000 through 2004. In re La Russo, 190 N.J. 335 (2007) (La Russo I). As detailed below, the facts in LaRusso I are nearly identical to the facts of this case.

In 2012, the Court censured respondent for gross neglect, pattern of neglect, lack of diligence, and conflicts of interest in respect of four real estate loan transactions. In re La Russo, 212 N.J. 108 (2012) (La Russo II).

On January 10, 2019, the Court temporarily suspended respondent from the practice of law. In re La Russo, ___ N.J. ___ (2019). He remains suspended to date.

Service of process was proper. On August 30, 2018, the OAE sent a copy of the formal ethics complaint to respondent's office address, by regular and certified mail, return receipt requested. On September 7, 2018, the OAE received the return receipt, which had been signed by L. Leven. The letter sent by regular mail was not returned.

Also, on September 7, 2018, Larry Leven, Esq., who shared office space with respondent, told the OAE that he had been taking respondent's office mail to respondent at his home on a weekly basis.

On October 12, 2018, the OAE sent a letter and a copy of the complaint to respondent at his home and office addresses, by regular and certified mail, return receipt requested. The OAE informed respondent that, unless he filed an answer to the ethics complaint by October 19, 2018, the matter would be certified directly to us for the imposition of discipline.

On October 15, 2018, C. Ruanne accepted delivery of the mail sent to respondent's home address. The letter sent by regular mail was not returned.

On October 31, 2018, Leven informed the OAE that, for the past four weeks, respondent had been going to his office one day per week. By the following day, respondent still had not filed an answer, and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

**COUNT ONE: THE FUNERAL HOME MATTERS (XIV-2018-0325E)**

This case arises from respondent's attempt to continue engaging in the unethical conduct for which he received a censure in La Russo I. In short, respondent, who performed collection work for several New Jersey funeral homes, perpetrated a scheme whereby the beneficiaries of deceased members of the State-administered Public Employees' Retirement System (PERS) paid respondent to ensure that his funeral home clients received payment for undertaking the funeral arrangements of the deceased PERS members.

In La Russo I, we found that, from 2000 to 2004, respondent had been performing collection work for several New Jersey funeral homes, including the Perry Funeral Home (Perry) in Newark. In the Matter of Anthony J. La Russo, DRB 06-343 (March 30, 2007) (slip op. at 2-3). During that time, the funeral homes – notably Perry – referred to respondent forty-five beneficiaries of deceased PERS members. Id. at 3. The referrals were made while the beneficiaries were at the funeral homes making final arrangements for their loved ones. Once it became known that a beneficiary did not have the means to pay for the arrangements, a funeral home representative called respondent, who then faxed to the funeral home for the beneficiary's signature a retainer agreement and a form letter of representation addressed to the State. Ibid.

The retainer agreement provided that the beneficiary was hiring respondent to process a claim for life insurance or death benefits in order to "secure payment of the balance due" to the funeral home and that, if the benefits were not promptly paid, the beneficiary would pay the funeral bill with personal funds. Id. at 4. The agreement contained an acknowledgement that the beneficiary was entitled to retain an attorney of his or her choice but that the beneficiary had chosen respondent to whom the beneficiary would pay $350 for his services. Id. at 4-5.

The letter of representation, which purportedly was written by the client and notarized by funeral home personnel, stated that the beneficiary had retained respondent to process and receive payment of the "life insurance or death benefits" for the purpose of securing payment of the funeral bill and that the State was authorized to remit payment of the benefits to respondent, albeit payable to the beneficiary. Id. at 4. The letter concluded by stating that "this arrangement may not be revoked by me without written consent of my said attorney." Id. at 4. Respondent admitted that the "non-revocability clause" was not legally binding but stated that he had used it "for effect." Ibid.

We found that respondent's representation of the PERS beneficiaries for the sole purpose of obtaining their benefits to pay for funeral expenses, while respondent also served as attorney for the funeral homes, constituted a conflict

of interest under RPC 1.7(a)(2). Id. at 11. Specifically, his representation of the PERS beneficiaries was materially limited by his responsibilities to the funeral homes, as well as by his own interests – the collection of a legal fee. Ibid.

Further, we found that respondent did not comply with the requirements of RPC 1.7(b)(1), which permits an attorney to proceed with a representation proscribed by RPC 1.7(a) if, after full disclosure and consultation, the attorney obtains informed, written consent from the client. Id. at 13. In this regard, we found that the "waiver" language in the retainer agreement was "wholly insufficient." Ibid.

We concluded our decision in La Russo I by cautioning respondent against engaging in these types of conflicts in the future. Id. at 15. Rather than heed our warning, respondent merely modified both the retainer agreement and letter, and continued the practices that we and the Court had condemned in La Russo I. We are now called upon to assess the propriety of his modifications.

Specifically, respondent replaced the retainer agreement with an "Authorization and Waiver of Conflict of Interest" form (waiver form). He replaced the letter of representation with an "Authorization Letter." Although the documents varied in some respects, they were nearly identical to the documents in La Russo I, except that respondent was no longer identified as the

beneficiary's lawyer; no legal fee was mentioned; and the "waiver" no longer purported to be irrevocable.

In the matter now before us, the OAE investigated respondent's representation of Perry, in addition to the Chapels of Eden Funeral Home (Eden) and Churchman Funeral Home (Churchman). According to the formal ethics complaint, for some time, Prudential Insurance Company (Prudential) had been the life insurance carrier for the State Division of Pensions and Benefits (Division). PERS beneficiaries often received their benefits in the form of a book of Prudential Alliance checks, which designated the account holder as follows:

> [Name of the beneficiary]
> C/O Anthony J. La Russo, Esquire
> 175 Fairfield Ave. Unit 5-A
> West Caldwell, NJ 07006
>
> [C¶30.][1]

The OAE interviewed thirteen beneficiaries who had made funeral arrangements with the Eden, Perry, and Churchman funeral homes. The complaint details the experiences of six of them. We now turn to the facts pertaining to each of the three funeral homes.

[1] "C" refers to the formal ethics complaint, dated August 28, 2018.

**The Eden Matter**

In 2014, respondent provided a waiver form to Eden's owner, Robert Brown. Brown presented the form to PERS beneficiaries who had contracted with Eden to undertake their decedents' funeral arrangements. The form stated that the beneficiary had authorized respondent to process the beneficiary's claim to the Division in order to secure payment of the balance owed to Eden for the decedent's funeral and burial.

The waiver form continued:

> I agree to cooperate to allow for prompt processing of my claims. I agree to pay the funeral bill from my personal funds, if these benefits are not sufficient, or if the benefits are not promptly paid to me for any reason.
>
> I am aware that Mr. La Russo is attorney for the Chapels of Eden Funeral Home, LLC, and that he does not represent me. I agree that I will immediately give written notice to Mr. La Russo and to the Chapels of Eden Funeral Home, LLC if I wish to revoke this authorization. I agree that, upon written demand, with or without cause, Chapels of Eden Funeral Home, LLC is entitled to immediate payment.
>
> I have had sufficient opportunity to consult an attorney of my choice, and to make other arrangements for payment of the bill, or to arrange for someone else to process my claim[.]
>
> [C¶21;Ex.3.]

Respondent also provided Brown with an authorization letter from respondent to the Division, which respondent and the beneficiaries were to sign,

and Brown was to witness the signatures. The letter stated that its purpose was to confirm that the beneficiary had authorized respondent to process the beneficiary's claim for payment of life insurance, pension refunds, or death benefits that may be payable to the beneficiary in connection with the death of the deceased PERS enrollee. The letter instructed the Division to send the benefit notice and claim forms to the beneficiary at respondent's office.

In 2009, Toria Long paid Eden approximately $5,000, which she estimated to be the cost of her mother's funeral arrangements. Long's signature appeared on a waiver form and an authorization letter, which were among the numerous forms that Brown had requested her to sign. Long did not recall having signed any forms regarding respondent, however. Moreover, Eden personnel did not explain the documents to Long, and she was not told that she could consult an attorney of her choice, make other arrangements for the payment of the bill, or arrange for someone else to process her claim.

Apparently, respondent had represented to the OAE that he did not have contact with any PERS beneficiaries. Yet, after Long's mother's funeral, respondent called Long at her Michigan home and insisted that he had represented her and, thus, she owed him $350. After they had argued, Long agreed to pay respondent, and issued a $350 Prudential Alliance check to him.

**The Perry Matters**

In 2014, respondent provided the waiver form to Perry's owner, Sam Arnold. In turn, Arnold presented the form to PERS beneficiaries who had contracted with Perry to undertake their decedents' funeral arrangements. The form was substantially similar to the waiver form described in the Eden matter above, with an additional paragraph as follows:

> We are aware that Mr. La Russo is attorney for the Perry Funeral Home. We waive any real or potential conflict of interest that it might be considered he has in rendering services to us in this regard. We agree to cooperate to allow for prompt processing of our claims.
>
> We agree that we will immediately give written notice to Mr. La Russo and to the Perry Funeral Home if we wish to revoke this authorization. We understand and agree that we are personally liable for payment to the Perry Funeral Home. We agree to make full payment immediately upon demand, notwithstanding that we may be entitled to payment of the aforesaid benefits from the State of New Jersey, Division of Pensions[.]
>
> [C¶27;Ex.5.]

Respondent also provided Arnold with an authorization letter, which was substantially similar to the authorization letter described above in the Eden matter.

In 2014, brothers Ronhazim and Chancey Skipper contracted with Perry for the funeral arrangements for their mother. Prior to making the arrangements, Arnold directed Ronhazim to execute numerous forms. Arnold neither explained

the forms nor mentioned respondent's name. The Skippers had no contact with respondent. Ultimately, Ronhazim received some of his mother's death benefits by completing the required forms at the Essex County Surrogate's Office.

After the funeral, the Prudential Alliance checks arrived at the funeral home, at which point Arnold informed the Skippers that they had a balance due to respondent. Although the Skippers did not understand why they owed money to respondent, they paid him $350, from the Prudential Alliance checks.

In 2009, Paulette Curry engaged Perry for her brother's funeral arrangements. Arnold informed Curry that respondent could determine whether her brother had an insurance policy. Arnold did not tell her that respondent represented Perry. Curry did not recall completing a form waiving respondent's conflict of interest.

Curry called respondent with the limited request that he determine whether her brother had life insurance through the Division. After respondent replied in the affirmative, Curry completed all paperwork required by the Division to process the death benefits.

Thereafter, respondent called Curry to confirm that he would be paid for his services. Curry believed that respondent's $350 fee was "outrageous," given that he had made a single telephone call to the Division, but she paid him nevertheless, with a Prudential Alliance check.

In March 2015, Paula Kerney engaged Perry to undertake her brother's funeral arrangements. Arnold told Kerney that, because her brother was a State employee, he had a life insurance policy with the Division. Arnold presented Kerney with many documents, including the authorization granting respondent permission to communicate with the Division on Kerney's behalf. Kerney knew that respondent represented Perry, but was not told – until her life insurance proceeds were received – that she owed a fee to him.

Although Kerney made multiple attempts to contact the Division to learn the status of her claim, after three months, she sought respondent's assistance. On an unidentified date, the Division sent to respondent $61,000 in life insurance proceeds, which he deposited into Kerney's designated bank account.

Respondent told Kerney that she was required to pay him and that she had authorized him to take $350 from the life insurance proceeds that he had deposited on her behalf. On May 15, 2015, she sent respondent a $350 cashier's check.

**The Churchman Matter**

In November 2012, Joan Braswell engaged Churchman for her brother's funeral arrangements. A Churchman representative informed Braswell that respondent could assist her in obtaining death benefits from the Division, but

she would have to pay a $300[2] fee to him. Braswell did not want to pay for respondent's assistance, and, thus, communicated directly with the Division.

Respondent neither represented Braswell nor helped her obtain any death benefits. Yet, the Division provided the OAE with a recording of a telephone conversation in which respondent told a Division employee that Braswell's brother had a policy with the Division, that he was working with the family and the funeral home, and that he was the attorney for the family.

The complaint does not allege that Braswell paid any money to respondent.

**The OAE Investigation**

Based on the OAE's review of Prudential Alliance checks issued to Eden, Perry, and Churchman, the OAE concluded that, between 2009 and 2015, sixteen PERS beneficiaries, including the Skippers, Curry, and Long paid respondent $4,700 from their death benefits, using the Prudential Alliance checks. Prior to the death of the above beneficiaries' family members, respondent had not represented them. Further, respondent never informed the beneficiaries, in writing, that he was charging them for his services.

[2] In light of respondent's pattern described above, the actual amount likely was $350.

During a June 11, 2015 interview, respondent made the following misrepresentations to the OAE: he had not charged a fee to the funeral homes' customers; he had never discussed his fee with the beneficiaries; he had conducted three-way telephone conversations with the beneficiaries and funeral home representatives, during which he informed the beneficiaries that he represented the funeral homes, not the beneficiaries; he told them that they could hire either him or a "responsible person" to process the claims; he explained the conflict of interest waiver form to them; and, on occasion, a beneficiary, in appreciation for the work he had carried out, would reimburse the $350 to the funeral home.

The OAE interviewed thirteen PERS beneficiaries, including those named above, who had made their family members' funeral arrangements through Eden, Perry, or Churchman. Understandably, all of them were "in the throes of grief" when funeral home representatives presented them with numerous forms to sign. With the exception of Braswell, respondent processed all of the benefits claims. Of the thirteen beneficiaries interviewed, all but two paid his fee.

Seven of the beneficiaries, including Chancey Skipper, Long, Curry, and Braswell, were unaware that they had signed any document authorizing respondent to process and receive their benefits. Further, no one had explained the "conflict waiver" to them. They had not been informed that they could select

someone else to process their claims or that they had the option to consult with an attorney of their choice.

**COUNT TWO: THE LIBERTI MATTER (XIV-2017-0475E)**

Respondent represented Joseph Liberti in the sale of real estate consisting of one of two parcels: a residence at 6309 Jackson Street and an empty lot at 6311 Jackson Street. Liberti sold only the 6309 Jackson Street property. Respondent neither provided Liberti with an engagement letter, agreement, or contract nor discussed the attorney fees that he would charge for the real estate closing.

Respondent told the OAE that Liberti had agreed to pay him $250 per hour, beginning with his representation in what appears to be an unrelated foreclosure action in 2009, and continuing into the future. Liberti never agreed to pay respondent $250 per hour for his services. Indeed, in 2014, Liberti represented himself in the foreclosure matter.

By letter dated January 24, 2011, respondent asked Liberti and his wife, Maribel, to pay him $1,000 for services rendered and costs incurred in preparing and filing the deeds for the subdivision of the Jackson Street properties, as described below. On February 1, 2011, Maribel made a partial payment of $250. As seen below, respondent did not prepare or file the deeds.

The closing took place on November 15, 2011. Maribel, who held a power of attorney for Liberti, attended the closing and represented Liberti's interests. When Maribel reviewed the HUD-1 and saw an entry for a $12,101 fee to respondent, she refused to sign the closing documents, and so informed Liberti. Liberti and respondent had a one-minute telephone conversation in which respondent assured him that he would "get money back" after the closing. The transaction was completed.

In respondent's written reply to the grievance, he knowingly and falsely stated that, on November 9, 2011, he had e-mailed to Liberti an invoice totaling $12,345 for "extensive and involved" services performed on Liberti's behalf in the months leading up to the closing. However, Liberti did not have an e-mail account, and respondent never provided the OAE with a copy of the e-mail.

Respondent also misrepresented to the OAE that, because Liberti already had paid him $244 for an interim title report, respondent agreed to reduce the invoice to $12,101. Further, respondent knowingly and falsely stated that he and Liberti had attended the November 15 closing, where Liberti approved and signed the HUD-1 settlement statement, which reflected respondent's $12,101 fee. As previously noted, Liberti did not attend the closing.

In October 2016, nearly five years after the closing, Liberti and respondent exchanged correspondence regarding Liberti's attempt to recover the $12,101

promised to him after the November 2011 closing. On October 21, 2016, respondent sent Liberti a $12,345 invoice, which neither Liberti nor Maribel previously had seen. The invoice was dated November 9, 2011.

On November 7, 2016, respondent left a voicemail message for Liberti, claiming that he previously had sent Liberti an itemization of the $12,101, which included his fee for arranging a $50,000 loan to Liberti from a company owned by respondent's girlfriend, Diane Clemente. Liberti had not agreed to pay respondent for arranging this loan.

Although no loan document is attached to the complaint, the purpose of the loan was to complete the construction on the Jackson Street property, prior to its sale. The interest rate was twelve percent, and, as collateral, a lien was placed on Liberti's Englewood Cliffs residence. The HUD-1 reflected a $56,000 second mortgage payoff to Clemente.

The November 2011 invoice charged $12,345[3] for services rendered and costs incurred in negotiating and finalizing the contract of sale for 6309 Jackson Street and attending the closing; originating and closing on the second mortgage loan; and obtaining subdivision approval of 6311 Jackson Street. $9,986 of the bill represented legal fees, including $2,152 for attorney Anne Marie Rizzuto's

[3] The invoice reflected a $250 credit for Maribel's February 2011 partial payment of the $1,000 charge for respondent's preparation and filing of the Jackson Street properties' deeds.

subdivision services and a $103 subdivision recording fee. However, the planning board had granted Liberti subdivision approval seven years earlier, in 2004. Liberti had paid another attorney $500 to represent him in that approval process.

Rizzuto's $2,152 invoice described her services as "Perfection of Subdivision Deed," which included reviewing the prior planning board approvals, drafting and obtaining planning board approval of both a new resolution and subdivision deed, and sending the documents to respondent for recording.

On November 16, 2011, Daniel D. Hediger, Esq., the settlement agent for the Jackson Street property closing, issued a $12,101 trust account check to respondent, which represented the proceeds from the sale. Respondent deposited the check into his trust account the next day. Yet, in reply to Liberti's grievance, respondent misrepresented that none of the $12,101 involved in the closing had been deposited in his trust account.

Also, on November 16, 2011, the day before respondent deposited the $12,101, he issued to himself a $2,000 trust account check containing the notation "Liberti." From November 17 to December 27, 2011, respondent issued to himself thirteen more trust account checks, totaling $16,500, without client references. On December 5, 2011, he made a $1,200 cash withdrawal from his

trust account. These transactions totaled $19,700. Therefore, respondent depleted the $12,101 in proceeds from the Liberti real estate transaction.

Although in respondent's reply to the grievance, he claimed that he could not locate Liberti's files, respondent had given Liberti's file to a mutual friend, John Zoller, who was not a lawyer. Zoller was to return the file to Liberti, because respondent no longer wanted to represent him. Respondent did not have Liberti's permission to provide his client file, or to disclose the contents, to anyone else. When Zoller gave the file to Liberti, he told Liberti that respondent was terminating their attorney-client relationship. Liberti denied that respondent had ever notified him that respondent no longer represented him.

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

In the Funeral Home matters, as respondent did in La Russo I, he used his relationships with his clients – the Eden, Perry, and Churchman funeral homes – to generate the payment of improper fees by grieving PERS beneficiaries. Although respondent used different forms from those at issue in La Russo I, the new forms were designed to permit respondent to continue his predatory conduct without, he thought, running afoul of the disciplinary rules.

In La Russo I, we took issue with the retainer agreement, which provided that the beneficiary had retained respondent to process the beneficiary's death claim. La Russo I, slip op. at 10. After respondent was censured in 2007, he no longer used a formal retainer agreement or a form letter of representation, but instead replaced them with the waiver form and authorization letter at issue in this matter. The only material difference in the new forms was the omission of any reference to a fee or to respondent's identity as the beneficiaries' lawyer. The purpose remained the same: PERS beneficiaries would pay respondent to ensure that his clients, the funeral homes, would be paid for undertaking the funeral arrangements of the beneficiaries' loved ones.

RPC 1.7(a)(2) provides that a concurrent conflict of interest exists if there is a significant risk that the representation of one or more clients will be materially limited by, among other things, the lawyer's responsibilities to another client or by the lawyer's personal interest. La Russo I plainly informed respondent that his representation of the PERS beneficiaries was materially limited by his responsibilities to his funeral home clients and by his personal interest in collecting a $350 legal fee from each of the beneficiaries. Instead of taking heed of that determination, respondent sought to circumvent it.

Despite a conflict, an attorney may continue the representation of a client, if the attorney complies with the requirements of RPC 1.7(b)(1), which, as stated

above, permits the representation if "each affected client gives informed consent, confirmed in writing, after full disclosure and consultation." The consultation "shall include an explanation of the common representation and the advantages and risks involved. . . ."

We recognize that respondent's revised forms did not identify him as the beneficiaries' attorney. Nevertheless, respondent led the beneficiaries to believe that he would act in their behalf and be paid a fee for doing so. Respondent even gave the appearance that he obtained the beneficiaries' waiver of his conflict of interest. Thus, his conduct fell within the parameters of RPC 1.7(a)(2).

Respondent, however, made no attempt to comply with RPC 1.7(b)(1). The "waiver" language in the waiver form did not allow the PERS beneficiaries to make an informed decision. The form did not contain any disclosure or explanation of the conflict. Rather, the form merely stated that the beneficiary had had "sufficient opportunity to consult an attorney of [his or her] choice." By avoiding any attempt to obtain informed consent in respect of the conflict, respondent took advantage of the vulnerability of the grieving PERS beneficiaries, leaving them exposed to his predatory practices and demands for payment. He, thus, violated RPC 1.7(a)(2).

RPC 1.5(b) requires a lawyer, who has not regularly represented a client, to communicate, in writing, the basis or rate of the fee, either before or within a

reasonable time after commencing the representation. Respondent's waiver form made no reference to the payment of legal fees; yet, he collected more than $4,000 in fees from the PERS beneficiaries, none of whom he had represented previously. He, thus, violated RPC 1.5(b).

RPC 4.1(a)(1) prohibits a lawyer from making a false statement of material fact to third persons. In respect of Braswell's matter, respondent violated this RPC when he falsely asserted to the Division, during a recorded telephone call, that he was "working with the family" and that he was the family's attorney, even though Braswell had declined his assistance, choosing instead to work directly with the Division.

RPC 8.1(a) prohibits a lawyer from knowingly making a false statement of material fact in connection with a disciplinary matter. Respondent violated the Rule when he misrepresented to the OAE that PERS beneficiaries were not charged a fee for his services; that he had never discussed his fee with the beneficiaries; that, during three-way telephone conversations among the beneficiaries, funeral home representatives, and himself, he had informed the beneficiaries that he represented the funeral homes, explained the conflict of interest form to them, and advised them that they could hire someone other than him to process the claims; and that sometimes a beneficiary reimbursed the $350 fee to the funeral home in appreciation of his work.

RPC 8.4(c) prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Here, the purpose of the arrangement between respondent and the funeral homes was for respondent to ensure that the funeral homes would be paid and, in exchange for accomplishing that payment, respondent would be paid – not by the funeral homes – but by the grieving and unwitting beneficiaries who had no idea that they were obligated to pay him a fee for assisting them. He, thus, violated RPC 8.4(c).

Additionally, in the Liberti matter, the complaint charged respondent with having violated RPC 1.5(a), which prohibits an attorney from charging an unreasonable fee and sets forth eight factors that must be considered when making that determination. Although the complaint does not contain enough information for us to determine whether respondent's total fee was reasonable, we consider his $1,000 fee for the preparation of deeds performed by another attorney to be a per se violation of the Rule, in addition to RPC 8.4(c).

Respondent also violated RPC 1.5(b). He never provided Liberti with a writing setting forth the basis or rate of his fee in the real estate and loan matters.

As has been respondent's practice over the years, he engaged in an impermissible conflict of interest, in violation of RPC 1.7(a)(2), when he arranged for the loan from his girlfriend to Liberti. Certainly, there was a significant risk that respondent's representation of Liberti would be materially

limited by either his responsibilities to a third party – his girlfriend – or by his personal interest in their relationship. Indeed, he purportedly charged Liberti $9,986 for his efforts in obtaining a second mortgage from his girlfriend at twelve percent interest.

RPC 1.15(d) requires attorneys to comply with the recordkeeping requirements set forth in R. 1:21-6. Rule 1:21-6(c)(2) prohibits cash withdrawals from an attorney trust account. Respondent violated R. 1:21-6(c)(2), and, consequently, RPC 1.15(d), when he made a $1,200 cash withdrawal from the trust account on December 5, 2011.

RPC 1.16(d) requires an attorney who terminates the representation of a client, among other things, to give the client reasonable notice. Respondent violated the Rule when he turned over Liberti's file, without his consent, to a third party, who returned the file to Liberti along with the message that respondent no longer represented him.

Finally, respondent violated RPC 8.1(a) when he falsely stated to the OAE that Liberti had agreed to pay him $250 per hour for legal services, that he had e-mailed his invoice to Liberti, that Liberti had attended the real estate closing and approved the HUD-1 settlement statement, and that respondent had been unable to locate Liberti's file.

We now turn to the question of the appropriate quantum of discipline to impose on respondent for his misconduct in both the Funeral Home and Liberti matters. We begin by noting that this matter represents respondent's second acknowledgment that he has engaged in brazen conflicts of interest, and second admission that he has profited from the exploitation of an extremely vulnerable class – the family members of the recently deceased, who were struggling to pay funeral expenses. By way of analogy, in In re Torre, 223 N.J. 538, 549 (2015), the Court announced that, going forward, "serious consequences" would result from predatory behavior toward a vulnerable class – in that case, the elderly. Torre borrowed $89,250 from an elderly client, a sum that represented about seventy percent of her life savings, and repaid a fraction of that amount. Id. at 539. For his exploitation of an elderly client, despite his lack of prior discipline, the Court suspended Torre for one year. Id. at 549.

We are greatly troubled by respondent's predatory pursuit of vulnerable persons grieving the death of their loved ones, which he has repeatedly carried out under the guise of representing their interests. The prior discipline imposed on respondent for this same conduct gave him no pause. Rather, he treated that determination as nothing more than a challenge to overcome by creating an end-run around the RPCs. By his default, respondent shows no interest in explaining

his behavior or respecting the disciplinary system's call to account for his continued exploitation of the bereaved.

In the case of respondent's work with various funeral homes, we have yet to learn the total number of beneficiaries whom he has victimized. Based on the number of victims in La Russo I and this matter, we are certain of at least sixty-one, although the number may be higher.

The Court gives no quarter to those who prey on the vulnerable, be they frail and elderly or of limited cognitive ability or competency. The discipline imposed on such attorneys ranges from a one-year suspension to disbarment. In addition to the one-year suspension imposed in Torre, see e.g., In re Tormey, 190 N.J. 578 (2007) (two-year suspension imposed on attorney who represented a seventy-nine-year-old man, who had immigrated to the United States from Portugal, had difficulty speaking and understanding English, and was of questionable competence, in the sale of his home to a friend of respondent, with whom he also maintained a business relationship); In re Casale, 213 N.J. 379 (2013) (three-year suspension imposed on attorney for "egregious misconduct" involving an elderly and sickly widow, who was nearly ninety years old and of questionable competence; among other things, the attorney represented the woman in the sale of her home to his friend and prepared her will, leaving her residuary estate to his friend, in addition to an advanced medical directive and

power of attorney naming his friend as her decision-maker); and In re Legome, 226 N.J. 590 (2016) (disbarment for attorney who represented a client in a matter involving a severe head injury sustained in an automobile accident; prior to the accident, the client had "significant developmental and cognitive disabilities;" the injury rendered him totally disabled and incapable of managing his financial affairs without assistance; the attorney recovered a $3.5 million settlement; we found that the attorney had taken "shameless advantage of an opportunity to line his own pockets at the expense of his significantly mentally impaired client," who trusted and relied on the attorney to protect him and his interests; specifically, in addition to an excessive contingency fee, the attorney accepted from the client several monetary gifts totaling $484,500 and embroiled himself in multiple conflicts of interest regarding those gifts; we viewed his misconduct as having set "a new high water mark for attorney dishonesty and the 'hoodwinking' of a vulnerable client").

Here, although the record does not establish that the beneficiaries in this case were either frail and elderly or of limited cognitive ability or competency, they were highly vulnerable. They were required to make funeral arrangements for their loved ones immediately, without the opportunity to mentally and emotionally process their deaths. Respondent swooped in, took advantage of their emotionally-weakened states of mind, and picked their pockets. In most

cases, the beneficiaries had no idea that they were beholden to respondent and simply acceded to his demands for payment, undoubtedly to avoid further stress in their time of sorrow.

Respondent's predatory behavior was exacerbated by his multiple lies to the beneficiaries, the Division, and, in particular, the OAE. For example, he demanded that Long pay him a $350 fee on the claim that he had represented her, which was false. He told a Division representative that he represented Braswell and her family. He told multiple, material, and outrageous lies to the OAE, including that he had not charged a fee to the beneficiaries but that, out of kindness, some of them had chosen to gift him $350 in appreciation for his work.

In addition to respondent's unconscionable, predatory behavior in the Funeral Home matters, we note his misconduct in the Liberti matter. As he did in La Russo II, respondent engaged in self-dealing, via loan transactions. He also uttered numerous misrepresentations to his client and to the OAE, and engaged in otherwise dishonest conduct, such as charging Liberti for legal work performed by another attorney. We note, too, respondent's other ethics infractions: his failure to communicate to Liberti, in writing, the basis or rate of his fee; his recordkeeping violation; and his failure to notify Liberti that he was terminating the representation.

Respondent's conduct in both the Funeral Home matters and the Liberti matter demonstrates that he either refuses or is unwilling to learn from his prior mistakes. Although he escaped this finding in La Russo II, he cannot continue to benefit from what has now been demonstrated to be a matter of character, not timing.

In La Russo I (the first funeral home matter) and La Russo II (the real estate loan transactions matter), there was an overlap in respondent's conduct. Thus, in La Russo II, the OAE argued that we should not consider, in aggravation, the prior discipline imposed in La Russo I. In the Matter of Anthony J. La Russo, DRB 12-062 (July 18, 2012) (slip op. at 15). We rejected the OAE's argument and voted to impose a three-month suspension because, in our view, respondent's conduct in both matters, "evidence[d] his propensity for violating the Rules of Professional Conduct." Ibid.

The Court rejected the suspension, without comment, and censured respondent instead. Although the Court did not issue an opinion, we presume that its basis for doing so was the contemporaneous nature of the misconduct in La Russo I and La Russo II.

Here, we do not afford respondent any benefit in respect of the timing of his misconduct. The conflict in the Liberti matter occurred in late 2011. Although respondent was not disciplined until 2012 for his conflicts of interest

in La Russo II, we note that the grievance in La Russo II was filed in April 2010 and docketed the following month. The investigation concluded in November 2011.

In this case, although the date of the loan from Clemente to Liberti is unknown, it certainly was executed before the date of closing, November 15, 2011. Thus, respondent was on notice, in advance of the Liberti conflict, that his practices in arranging for loans to and from clients were under scrutiny. He should have carefully considered the propriety of arranging a loan from his girlfriend to his client, without informed written consent.

Lest there be any hope that respondent is capable of rehabilitation, we note that he has defaulted in this matter. He, thus, refuses to acknowledge and account for his wrongdoing, let alone express remorse for his gross exploitation of the grieving beneficiaries in the Funeral Home matters.

Respondent's conduct in the Funeral Home matters demonstrates the pathological nature of his insistence in entangling himself in conflicts of interest, without concern for those who may be harmed, as well as a disturbing degree of venality. He persisted in his outlandish conduct, despite the prior declaration that his practices were unethical. In addition, respondent's arrangement of a loan from his girlfriend to his client, after he had been censured in La Russo I and while he was under investigation in La Russo II, demonstrates

a lack of good judgment, good character, and willingness to learn from prior mistakes.

At this point, we can neither ignore nor accept what is clearly a practice, not a predilection or propensity. Nor can we accept or ignore that respondent is pathologically dishonest and entirely lacking in integrity. The imposition of prior discipline has not convinced respondent to change his ways. In short, he is a serial self-dealer who either is unable or refuses to conform his conduct to that required of a member of the New Jersey bar. He is, in a word, unsalvageable, rendering it impossible to protect the public from his pernicious practices. We, thus, recommend his disbarment.

Members Boyer and Singer voted to impose a three-year suspension. Vice-Chair Clark voted to impose a two-year suspension.

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 Anthony J. LaRusso
Docket No. DRB 18-373

Decided: July 15, 2019

Disposition: Disbar

| ***Members*** | Disbar | Three-Year Suspension | Two-Year Suspension | Recused | Did Not Participate |
|---|---|---|---|---|---|
| Frost | X | | | | |
| Clark | | | X | | |
| Boyer | | X | | | |
| Gallipoli | X | | | | |
| Hoberman | X | | | | |
| Joseph | X | | | | |
| Rivera | X | | | | |
| Singer | | X | | | |
| Zmirich | X | | | | |
| Total: | 6 | 2 | 1 | 0 | 0 |

Ellen A. Brodsky
Chief Counsel