

Book

DISCIPLINARY REVIEW BOARD

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OF THE

SUPREME COURT OF NEW JERSEY

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February 22, 2005

Via Certified Mail, R.R.R. & Regular Mail

Frank Fusco, Esq.
15 Princeton Street
Clifton, New Jersey 07014

RE: In the Matter of Frank Fusco
Docket No. DRB 04-442
District Docket No. IIA-03-023E
LETTER OF ADMONITION

Dear Mr. Fusco:

The Disciplinary Review Board reviewed the motion for discipline by consent ("reprimand or such lesser discipline as the Board may impose") filed by the District IIA Ethics Committee pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion and to impose an admonition.

Specifically, in 2000, you represented Tomasz Ziolkowski, as seller, and Joe Biesiada, as buyer, in a real estate transaction involving a house in Clifton, New Jersey. Ziolkowski and Biesiada had agreed to the material terms of the transaction before your involvement.

On March 27, 2000, you prepared the contract and witnessed the signatures thereon. You did not advise the parties of the conflict inherent in the dual representation and did not obtain their consent thereto. Your conduct was unethical and a violation of RPC 1.7(a).

I/M/O Frank Fusco

Docket No. DRB 04-442

Page Two

Four years after the closing of title, Ziolkowski alleged that he had not received the down payment of \$5,000.¹ When he threatened to report you to disciplinary authorities if you did not pay him the \$5,000, you threatened to file a civil suit against him. Your conduct in this regard violated RPC 8.4(d) (conduct prejudicial to the administration of justice).

In imposing only an admonition, the Board considered numerous mitigating factors: you did not technically engage in a conflict of interest situation, since there is no suggestion that a conflict ever arose between Ziolkowski and Biesiada; both parties, with whom you were friendly, wanted a "quick, simple closing, without lawyer involvement on either side;" you were moved by the desire to help friends; you did not participate in the negotiation of the terms of the contract, but merely in their memorialization; neither party was adversely affected by your conduct; you did not receive a fee for your services; you have no disciplinary record; and your statement about suing Ziolkowski was made "in the heat of the moment," and was an unfortunate "knee-jerk" reaction after you believed you were threatened.

Your conduct adversely reflected not only upon you as an attorney, but also upon all members of the bar. Accordingly, the Board has directed the issuance of this admonition to you. R.1:20-15(f)(4).

A permanent record of this occurrence has been filed with the Clerk of the Supreme Court and the Board's office. Should you become the subject of any further discipline, it will be taken into consideration.

¹ There is no evidence that Ziolkowski did not receive these funds.

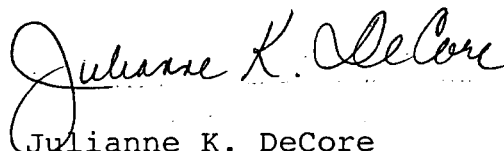
I/M/O Frank Fusco

Docket No. DRB 04-442

Page Three

The Board has also directed that the costs of the disciplinary proceedings be assessed against you. An invoice of costs will be forwarded under separate cover.

Very truly yours,



Julianne K. DeCore
Chief Counsel

/tk

c. Chief Justice Deborah T. Poritz

Associate Justices

Stephen W. Townsend, Clerk, Supreme Court of New Jersey

Gail G. Haney, Deputy Clerk, Supreme Court of New Jersey
(w/ethics history)

Mary J. Maudsley, Chair, Disciplinary Review Board

David E. Johnson, Jr., Director, Office of Attorney Ethics

Helen L. Glass, Chair, District IIA Ethics Committee

Morton R. Covitz, Secretary, District IIA Ethics Committee

Tomasz Ziolkowski, Grievant