SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-182
District Docket No. IIB-2010-0043E

IN THE MATTER OF	
JOHN L. BLUNT	
AN ATTORNEY AT LAW	

Decision

Argued: September 15, 2011

Decided: December 1, 2011

Salvador H. Sclafani appeared on behalf of the District IIB Ethics Committee.

Robert E. Rochford appeared on behalf of respondent.

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

This matter was before us on a recommendation for discipline (reprimand) filed by the District IIB Ethics Committee (DEC). The amended complaint charged respondent with having violated RPC 1.1(b) (pattern of neglect), but referred to the violation as "neglect . . . and lack of competence;" RPC

1.15(b) (failure to promptly deliver funds or property to the client); RPC 1.3 (lack of diligence); RPC 1.4, presumably (b) (failure to comply with the client's reasonable requests for information about the matter); RPC 1.5 (b) (failure to set forth in writing the basis or rate of the attorney's fee); and RPC 8.1(b) (failure to cooperate with ethics authorities).[1] We determine to dismiss the complaint for lack of clear and convincing evidence of any ethics infractions.

Respondent was admitted to the New Jersey bar in 1988. He has been reprimanded three times. On September 5, 2002, he received a reprimand for counseling a client to enter into a sham contract of sale that was then used as an exhibit to an affidavit in a litigation matter. In re Blunt, 174 N.J. 294 (2002). On June 9, 2006, he received another reprimand, this time for negligent misappropriation, recordkeeping violations, and failure to cooperate with ethics authorities. In re Blunt,

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[1] The complaint also charged respondent with having violated "RPC 1:26(c)(1)(D) and (E)" for failing to provide an accounting of his fees and costs. It is possible that the complaint meant to cite R. 1:21-6(c)(1)(D) and (E), which require attorneys to retain for seven years "copies of all statements to clients showing the disbursements of funds to them or on their behalf." as well as "copies of all bills rendered to clients."

187 N.J. 71 (2006). Finally, on February 9, 2010, he received a reprimand for misconduct in two matters, including gross neglect, lack of diligence, failure to communicate with the client, failure to withdraw from the representations due to material impairment, and failure to set forth in writing the basis or rate of his legal fee. In re Blunt, 201 N.J. 117 (2010).

Toward the end of the DEC hearing in this matter and after numerous witnesses had testified, respondent's counsel and the presenter went through the amended complaint, paragraph by paragraph, and stipulated many of the essential facts alleged in the complaint.

The conduct that gave rise to this matter was as follows:

In 2004, Marcella Sgherza retained respondent to represent her to refinance the mortgage on her house. She planned to use some of the loan proceeds to purchase and renovate a building in Fairview to relocate her business, a bar that she operated just down the road in a rented Fairview space. Toward that end, Sgherza gave respondent $154,000 out of the loan proceeds, which he placed in his attorney trust account.

In early 2005, Sgherza retained respondent to aid her in the purchase of a suitable building for the new bar. With his

assistance, she placed bids on several different properties. According to Sgherza:

> [T]o the best of my recollection, which is many years and many hard times in between, I believe that refinance took place at the end of 2004. We were trying to, attempting to purchase two or three different buildings, one at a time, and one didn't go through, the other one we missed the boat on and the final one was going to happen in 2005, so I would say from November, 2004, the fall of 2004 till 2005. I don't know what month. Maybe June, July, August. I cannot say what month, but I know I was running into difficulty because when the equity was taken out of my home my mortgage skyrocketed to over $2,000 a month and I had no means of income to pay it. My rent did not cover it. That's when I, like, you know, started to have difficulty with my finances and we tried to buy the building.
>
> [T15-4 to 20.][2]

Ultimately, Sgherza settled on a property. In April 2005, she signed a standard seller's contract to purchase the property. According to respondent, he then drafted a six-page rider to the contract and sent it back to the seller's attorney, Sang Chin Yom. At some point, the seller filed a "time of the essence [letter] against Sgherza."

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[2] "T" refers to the transcript of the March 8, 2011 DEC hearing.

The record contains respondent's July 16, 2005 letter to Yom, which respondent hand-delivered to Yom on Monday, July 18, 2005. The letter stated as follows:

> Please be advised that I had an opportunity to review your correspondence dated, July 15, 2005, in which you attempt to establish a "Time of the Essence" closing on July 25th [sic]", 2005, with my client. Unfortunately, I must point out that [sic] the Contract which was amended on April 20th, by forwarding to your office an "Attorney Review" of the Contract, to which you acknowledged by forwarding a facsimile dated April 22nd, 2005 & faxed on April 28th, 2005 and responded to on April 29th, 2005. I then personally appeared at your office to confirm that no further issues were in controversy and presented Attorney Trust Account check # 1159 in the amount of $68,000.00 . . . to your real estate paralegal, with [sic] payable to the order of Sang Chin Yom, Esq. Attorney Trust Account, dated May 5th, 2005. The check was accepted and the Contract with revisions negotiated by each party through their Attorney's [sic] was in full force and effect.
>
> I have explained to my clients' [sic] that based on paragraph 6. "Mortgage Contingency" which reads in pertinent part that "the Contract of Sale is expressly contingent upon the Buyer's receipt of a written unconditional commitment of an institutional mortgage lender of the Buyer's choice for a first mortgage on the property in the amount of $271,000.00 ..... Buyer shall promptly apply for this loan and make a good faith effort to obtain it." The paragraph provides that "In the event the Buyer shall not be able to obtain the written commitment

> ..... or (receive) any mutually agreed upon extension, either party may cancel the Contract." Since my clients' [sic] have been unable to obtain a mortgage commitment after at least three good faith efforts, the question becomes whether your client wants to extend the time frame to receive a mortgage commitment or in the contrary, return my clients' deposit and cancel the Contract. Clearly, a "Time of the Essence" closing cannot be established when a term of the Contract essential to the closing taking place has not be satisfied, even though my client has been working diligently within the terms of the contingency, but at this point has been unsuccessful.
>
> Kindly review this situation with your client and advise me how this matter can be mutually resolved, so that this closing can take place in a diligent and expeditious fashion.
>
> Thank you for your anticipated cooperation in resolving this matter. If you have any further questions, please feel free to contact me immediately. I have notified my client to continue their cooperation in order to obtain a mortgage commitment and we will then arrange for a mutually acceptable closing date.
>
> [Ex.C-5.]

When the contract of sale was executed, in April 2005, respondent hand-delivered Sgherza's $68,000 deposit to Yom.

Sgherza blamed respondent, when the purchase ultimately fell through a few months later, claiming that he had failed to make the transfer of her liquor license a contract contingency for the purchase of the building, "which was critical to the

sale." Respondent flatly denied that charge, testifying that he had, in fact, driven to the Yom's office to discuss the inclusion of that contingency in the contract, but Yom had refused. Respondent testified: "I don't believe we cleaned it up, and then what happened, [the mortgage broker] said, you know, I'm sorry, John, but if this can't be cleaned up in a certain amount of time I can't guarantee she'll get the loan."

Respondent also recalled that, because he had never seen the building, Sgherza, not he, had possession of the liquor license forms required for a transfer. They included a form for building sketches that Sgherza's son was supposed to draft: "I was awaiting to negotiate that with the [township] attorney and then ask her to please provide a sketch and then give that back to me, and if we can agree on that aspect of it, we move forward. . . ."

Moreover, respondent explained, he had spoken with the Fairview township attorney, Dennis Oury, about the prospects of a swift transfer. Oury was skeptical that Sgherza could have her license approved, prior to purchasing the property. Respondent testified as follows:

> Q. The question was what did Mrs. Sgherza want you to do in connection with this real estate transaction in the Spring of 2005?

A. She wanted -- actually, she stated she wanted a liquor license transfer. As will be explained to you, the Panel, and I think you will appreciate this, [the town] is not going to listen to a bunch of liquor license transfers to properties that you're thinking about buying. You own the property. You buy the property. The property's being sold to you. This is what I'm trying to get through to the [seller's] attorney with the acknowledgment that I can't, if I can't get a liquor license transferred to that piece of property, she gets her money back. That's taking place but it's taking time, but the town will not accept this application.

Q. Why?

A. She doesn't own the property. I can't even tell the town that the sale is contingent on a liquor license transfer. They really don't care. In fact, Mr. Oury is one of the Township Attorneys at that time who, like, I believe sat over these. He explained it, he said John, you know how much work that would be if we, if everybody who was thinking about buying a building, we went through the process of, yeah, you could move a liquor license, your liquor license, but then you get well, we don't want to go through with the deal, then it would be right back where -- that was my dilemma.

[T150-5 to T151-10.]

With regard to lack of diligence and gross neglect charges, respondent denied them for several reasons. First, the representation was very brief. The contract of sale was signed in April 2005. During his negotiations with Yom, and just days before the July 25, 2005 time-of-the-essence closing date that

Yom tried to impose, Sgherza effectively terminated the representation by contacting two other attorneys about her case. She first tried to retain Oury, the township attorney, who called respondent and advised him that his client was seeking a new attorney, but that he could not accept the case. Sgherza then retained another attorney. Ultimately, Sgherza abandoned the purchase, and the new attorney had Yom return the deposit.

Ronald DelBalso, the private mortgage broker retained by Sgherza for the purchase, also testified about the matter. He stated that, when he became involved in the transaction, the seller's attorney had already sent a time-of-the-essence letter, which required swift action on his part to obtain financing. In just ten days, he obtained a bank commitment letter for the $271,000 needed to complete the sale. He recalled explaining to Sgherza, however, that the bank had "three or four pages" of contingencies that had to be satisfied, before it would fund the loan. Only one of those had to do with the liquor license transfer. Other contingencies had to do with the expected occupancy rate for the building, parking, the reconfiguration and renovation of the entire interior of the building, new flooring, new plumbing, and the like.

The bank was also concerned about Sgherza's ability to carry the loan, namely, whether she had sufficient reserves to weather potential licensing, environmental, construction, or other problems that could slow or halt the project.

DelBalso stated that, while Sgherza had a good plan, she might have been doing things out of order with respect to the project:

> Q. Was it your understanding that Mrs. Sgherza wanted the building only after she could get a liquor license?
>
> A. I'm sure she ended up thinking that way, of course. Why would you want a building without moving the business? That was her plan. Her plan was to expand her well-being and her business and, and it was a good plan. I'm not gonna say the word dream. She is, she is a very formidable woman. She can do whatever, she said she can do it, she's very strong, but I don't think enough forethought was done here. Maybe she put the cart before the horse, maybe. I don't know. I don't know what happened in the very beginning to make her decision or why she got all gung-ho on that building. I could see some of the -- it was very close to her original business. She, she would have her original crowd. They would be doubling it. Like I said, I liked the way she thought very much. It just wasn't meant to be.
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> [T218-4 to 23.]

The complaint also charged respondent with having failed to set forth the rate or basis of his fee in writing. Respondent

conceded that he did not do so here, claiming through counsel that it was unnecessary, due to the parties' past practices. Respondent explained that he met Sgherza in about 1995 and that, over the next ten years, he had represented her and her family regularly, sometimes weekly or monthly, during that time. On only two occasions did he accept a fee. On both occasions, the 1999 and 2004 refinancings, the amount was set forth in the HUD-1 statement, which he explained to his client in detail. Respondent was adamant that Sgherza never asked for a bill or fee agreement in any of their other dealings.

For her part, Sgherza agreed that she and respondent had formed a friendship over the years. She recalled having loaned respondent money on occasion, when he needed it, and that respondent had handled numerous family legal matters, free of charge, over the years. She acknowledged that respondent never utilized fee agreements in those matters.

The complaint also charged respondent with having failed to communicate with Sgherza during the time-of-the-essence period and, later, when she requested the return of her deposit and the file. With regard to the essential few days before Yom's deadline, Sgherza testified:

> I called him, I had two of my friends e-mail him, and I think that the time of the essence was the 25th. I don't remember the date specifically, but the last weekend before the time of essence was up I had my two friends e-mail him and they said this pertains to Marcella Tamarcy,[3] please call her back, it's very important. I had sent letters.
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> [T29-18 to 25.]

On cross-examination, Sgherza was pressed for details about the degree to which respondent may have communicated with her, during those critical days:

> Q. All right. Let's back up here. With regards to the time of the essence, do you know if Mr. Blunt ever responded to that attorney who wrote to you?
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> A. I do not recall. I'm sorry. I do not recall anymore because it's been too many years and too many bad memories. I don't recall this.
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> [T31-2 to 8.]

Respondent recalled receiving several odd emails, but did not open or reply to them because he did not know who had sent them. One had come from "Royal Cleaning Service, [which] I thought that was spam and someone wanted to clean my house." The

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[3] Apparently, Sgherza was also known by the last name Tamarcy,

other had been from "djieg@hotmail," to which respondent countered, "I don't know anyone on Hotmail."

Respondent also conceded that he did not communicate with Sgherza in writing, but countered that they saw each other "all the time" and spoke often about the case. He specifically recalled a meeting with Sgherza and DelBalso, after the time-of-the-essence letter from Yom:

> The things, and you've noticed the things we were trying to explain [to Sgherza], you'll hear this over and over, part of the liquor license transfer was is there enough parking for the people going into the establishment, is it properly zoned for that. Those questions I had a hard time answering, and when I met Mr. DelBalso and he expressed that he needed that in order to get her a mortgage, that's why this states right in here, that this contract has to include the fact that she can get a mortgage for the property. She didn't like that answer, but unfortunately that's the reality.
>
> Q. If Mrs. Sgherza went forward with the transaction, your testimony would be that she would first buy the building and then she would have the right to make application for the liquor license, correct?
>
> A. Well, she most certainly would have that right, but whether or not it would be granted, I had, I had doubts.
>
> Q. Did you put those doubts in writing to Mrs. Sgherza?
>
> A. We spoke almost every day.
>
> Q. I'm sorry. Sir, did you put that in writing?

A. No.

Q. No. Did you put in writing that she was running a risk in buying the building and subsequently being denied the liquor license transfer? Did you tell her that in writing?

A. No.

Q. Did you tell her --

A. No. Mr. DelBalso and I and she sat down together. No. Not in writing.

Q. Okay. Did you tell her in writing that there was no liquor license contingency in the contract?

A. Yeah. I told her that the contract was contingent upon her getting a mortgage and that she couldn't get a mortgage unless there was a liquor license transfer, and I told her a myriad of different ways.

[T185-3 to T186-20.]

Respondent was also charged with having failed to communicate with Sgherza, after the termination of the representation, in late July 2005, prior to Yom's time-of-the-essence letter. Sgherza's son, Jiancarlo Sgherza, testified that he had visited respondent's office location and had left numerous voicemail messages on respondent's cell phone, and had left a note at respondent's house, in an attempt to obtain the return of the $68,000 deposit and of the file. He claimed that respondent had ignored those requests for information.

Respondent was charged with having failed to turn over files and funds to Sgherza upon the termination of the representation. According to Sgherza, after retaining a new attorney to obtain from respondent the return of her deposit from the seller, she sought the return of her files and remaining funds from the 2004 refinancing. She testified as follows:

> My son had to meet -- had to pick it up from his house. I don't know where they met. He got a file. It was not the complete file of everything I wanted. He had a file which I didn't even open up. It was not the complete file. I did get the file but it was not a complete file, because after my son got the file I kept writing to him, that I wanted my complete file. Everything I was looking for was not there. I did get the file.
>
> [T36-14 to 23.]

While claiming that respondent never replied to his requests for information about the matter, Jiancarlo recalled meeting with respondent at his office on an unspecified date. Respondent was shutting down his office and had boxes of files

in hand.[4] Jiancarlo recalled helping respondent move the boxes from the office to respondent's house. He hoped that the opportunity would lead to information or files for his mother. When asked if respondent had given him an update or files that day, Jiancarlo could not recall, saying that five or six years had elapsed since then and that he could not say "with any certainty, honestly, if [he] received files or [had given] them to [Sgherza] or whatnot, not with, you know, certainty."

For his part, respondent testified that he promptly returned the 2005 transaction file. In the midst of this matter, July 2005, he was shutting down his office and moving files to a house in anticipation of a scheduled hospitalization. He testified:

> I knew I was going to the hospital for at least three weeks, and then after that period there were a number of phone calls to my home. My son was -- well, (Sgherza) knows my whole family. We were very friendly, but at this point, you know, she's getting frustrated. I'm trying to explain, you know, I have to see all these doctors. It's just a matter of coordinating. If your son comes to

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[4] As respondent explained in his answer, detailed infra at pp. 19-22, a terminal illness forced him to close down his law practice, in late July 2005.

> my house, whatever else I find I will give to him, and then there came a period later, maybe two to three weeks later when I gave him everything else. Now, I did not have all the files in my file and that's what she's talking about not getting back. I did not have that file.
>
> [T156-22 to T157-10.]

Respondent explained that Sgherza, too, was well aware, throughout the representation, that he was ill and closing down his practice:

> [I]t's a very simple misunderstanding, I believe.
>
> [Q.]
>
> Why don't you tell us why you believe that.
>
> [A.]
>
> Well, I mean, she knew that, and she even stated she knew that I was sick. She stated and her son stated that they even helped me close my office. He helped me move all the files from the office, 216 Anderson Avenue to my father-in-law's home in Cliffside Park . . . . So she knew I was closing things up. She knew I was wrapping things up. I think that by her own admission that should be a pretty fair comment.
>
> [T128-3 to 22.]

Respondent went on to explain that a number of old files, older than the seven-year requirement under the Court Rules, had been destroyed in a flood. Sgherza's older files would have been

among those destroyed. Those older files were the ones that had not been returned to her.

Sgherza did not contest respondent's version of events regarding the old files.

The complaint also alleged that respondent failed to promptly deliver her mortgage proceeds to Sgherza. The record contains few facts related to this charge. On the one hand, Sgherza testified that respondent had returned her funds. She was not asked when that had taken place. When replying to the grievance, respondent stated, "all of the allegations in the grievance took place over the course of seven (7) days, with no harm resulting to her."

Respondent also claimed to have stood at the ready, in late July 2005, to turn over the file to Oury, who declined the representation, or to the new attorney, who had accepted the case.

With regard to the remaining funds that respondent held, he stated, "I believe, I believe she got two checks. I believe she got one, the 68,000 [sic], and then another for whatever monies

was left over in the account." No evidence was presented that respondent failed to promptly deliver the funds to Sgherza or to her attorney, once respondent's representation was terminated.[5]

Finally, respondent was charged with having violated RPC 8.1(b) for failing to turn over trust account records to the DEC investigator. The record is unclear what trust account records were sought. Respondent's counsel told the DEC that no trust account records were ever requested of respondent.

Respondent stated that, in addition, all of his trust account records were, at the time, in the possession of the OAE, which had audited his trust account. Respondent specifically recalled "sitting down" three times with an OAE investigator to discuss the Sgherza matter and that no trust account improprieties were found relative to the transaction.

Respondent also presented mitigation for his actions. As has been well-chronicled in his prior disciplinary matters, he

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[5] A significant amount of time and testimony at the hearing was devoted to a $2,000 check that respondent wrote to Sgherza from his trust account, out of her monies, which was supposed to fund an extension of the time-of-the-essence date. After an OAE audit of respondent's trust account records for the period, he was not charged with any misconduct pertaining to that check.

suffers from a genetic blood disorder, hemochromatosis, which causes an overproduction of iron in his blood. The iron is stored in his bones, organs and tissue, and slowly disintegrates them. In his answer, respondent stated:

> The iron levels debilitate me physically and mentally and the iron migrates to my organs, joints and anywhere else it can reach in my body, including my brain.
>
> There is no known cure for hemochromatosis, which is quite rare in the toxic form that afflicts me. The only somewhat ameliorative treatment is for me to be "bled" at frequent intervals (in phlebotomies) to somewhat reduce the iron level in my blood. The iron accumulates in every part of my body; it rots the organs, bones and cartilage.
>
> In the past, the iron build up has caused my shoulder and lung to collapse and has eaten away all the cartilage and most of the muscles in my knees. During mid 2006 [sic] when the District Committee's investigator and I were in contact about various matters, including the Sgherza complaint, I was hospitalized for 3 – 4 weeks due to a perforated intestinal tract (the iron rotted a hole in the intestine) that the doctors believed would lead to my death from peritonitis. The "last rites" were administered to me in the hospital. I survived only because the area of perforation in my intestinal tract fortuitously was directly above a massive, though benign, cyst which prevented the leakage of toxic matter from my intestines into the organs in my body cavity. After almost four weeks of hospitalization I was released to return home. However my stomach was grossly distended because the

horrendously elevated levels of iron in my blood prevented full healing of my internal wounds. I still suffer from the distended stomach.

I have been hospitalized for at least two to four weeks in nearly every year of the past decade. In very early August 2008, I was suffering from intense bouts of copious sweating, as well as severe internal pain. When I called my physicians and described my symptoms, they instructed me to go immediately to the hospital.

My wife declined to drive me to the hospital, so my mother had to drive 45 minutes to my residence and take me to the hospital. This commenced a three and a half week period of hospitalization. After examining me and commencing treatment in the hospital, the staff explained that I was suffering massive failure of my kidneys and gall bladder.

When I left the hospital the day after the Labor Day holiday in 2008, the doctors had managed to revive my kidney function, although they indicated my gall bladder would never be able to function properly again. The doctors advised me that I almost certainly would have lost my gall bladder completely and have to rely on a colostomy bag, at best, and could have died if I was hospitalized as little as two hours later when my kidneys failed.

My doctors released me from the hospital in September 2008 on the strict condition that I not return to my house in Northvale, New Jersey, but rather recuperate over the long term at my parents' residence in Toms River, New Jersey.

This was because all of my doctors, including my psychiatrist of many years, were convinced that I could not survive if I

returned to live in the same house with my wife, who is almost always very verbally aggressive and intensely hostile to me.

This behavior naturally causes me a great deal of stress. When I am stressed and emotionally excited, my body accelerates and increases its production of toxic levels of iron in my blood.

My condition is quite delicate. My doctors have told me that with the best medical care I could anticipate a life expectancy of 51 to 54 years. I turned 49 years of age in November 2010.

. . . .

There are two more pertinent points about my physical/mental condition arising from my progressive chronic form of hemochromotosis [sic]: (1) in 2007 – 2008 my doctors discovered that the hemochromatosis [sic] led to the development of the disease of porphyria in me. That disease has various physically debilitating symptoms, ultimately leading to death. Another of its terrible side effects is dementia or what was formerly known as "madness". That was the diagnosis that led to the "confinement" of King George III of England, who was "suspended" from the English throne for much of the last few decades of his life. Medical historians have concluded almost universally that King George was a victim of porphyria; and (2) in November 2010 the Social Security Administration approved my application for disability benefits. The Social Security Administration has determined that I have been totally disabled since December 31, 2002.

[Ex.C-4 at 6 to 10.]

At the DEC hearing, respondent testified that, once the disease went to his brain, in 2004, he opted to limit his practice. He was in the process of completely closing down his office, during the Sgherza matter.

At one point in his testimony, respondent's answer began to drift away from the topic at hand. The following exchange took place between respondent and his counsel:

> Q. John, let's get back into the answer.
>
> MR. REPETTO: I have no other questions.
>
> A. So under my rationale —
>
> Q. John, you're rambling.
>
> A. I am rambling.
>
> CHAIRWOMAN SACCENTE: Let's stop the rambling. Mr. Rochford, if you could ask any further questions you have.
>
> MR. ROCHFORD: Okay.
>
> Q. John, let's go back to this condition of hemachromatosis [sic]. Is this a chronic degenerative disease?
>
> A. Yes.
>
> Q. And have your doctors indicated to you that with the best possible treatment you can expect a life expectancy of between approximately 52 to 55 years?
>
> A. Yes.
>
> MR. ROCHFORD: Okay. Did you hear the answer?
>
> Q. Okay. How old are you?
>
> A. 49.
>
> Q. You'll be 50?
>
> A. Right. 49.

Q. Okay. You're 49, you'll be 50 in November; is that correct?

A. Yes.

Q. Okay. Now --

A. I just want you to understand, you don't want to relive this over and over, but go ahead, I will do my best.

Q. Okay. Mr. Blunt, is there any treatment -- is there any cure for the condition you now have?

A. No.

Q. All right. Is there any ameliorative treatment available?

A. Well, all one can do, and now I do it as often as a human being can do it, is what's known as a phlebotomy. You stick a needle in your arm, they drain blood from you, they test you to see if it's at an appropriate level, a quick test, and then if they have to, they take another 750 cc's out, so it's an additional 750 cc's and whatever else.

Q. The purpose of these phlebotomies and reducing your blood, it reduces the amount of iron in your system?

A. Correct.

Q. Okay.

A. And if you notice the number of little scars, that's porphyria. What that means, if you don't get enough phlebotomies, the iron will actually seep through your pores to try to get out of your body and these will start to bleed. These are already black. I have them all over my back, but this is the only way you can deal with them.

[160-8 to 162-16.]

In a conclusory three-page report, the DEC panel stated that it had

> carefully considered and reviewed the testimony and evidence and has concluded that Respondent's conduct constitutes unethical conduct in that he has committed violations of RPC 1.1 (b), 1.3 and 1.4 for lack of competence, diligence and communication, as required by those RPC's. The Panel also finds that the Respondent violated RPC 1:26(c)(1)(D) and (E) in the failure to provide an accounting of his fees and services when the trust funds were returned to the Grievant.
>
> [HPR3.][6]

The DEC gave no specific justification for its findings and recommended the imposition of a reprimand, without citing supporting case law.

Upon a de novo review of the record, we are unable to agree with the DEC's conclusion that the evidence clearly and convincingly established that respondent's conduct was unethical.

With regard to RPC 1.1(b) and 1.3, there is no evidence that respondent neglected or lacked diligence in the handling of

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[6] HPR refers to the hearing panel report.

Sgherza's purchase, the gravamen of her grievance. To the contrary, respondent was actively engaged throughout the representation, writing to the seller's attorney, meeting with Sgherza and her mortgage broker, even traveling to the seller's attorney's office to try to buy his client more time to close on the purchase. Apparently, Sgherza believed that her deal fell apart because of some neglect by respondent. Yet, that belief belies respondent and DelBalso's consistent testimony, namely, that Sgherza was having trouble meeting a variety of contingencies that, ultimately, caused the deal to fall through.

Significant, too, was the discharge of respondent's services prior to the expiration of the time-of-the-essence closing date, July 25, 2005. As indicated previously, on July 18, 2005, respondent hand-delivered a letter to Yom (with a copy to Sgherza), contesting Yom's time-of-the-essence demand. Just two days later, on July 20, 2005, attorney Oury informed respondent that Sgherza had come to see him and another attorney, about taking her case.

July 20, 2005 fell on a Wednesday. Sgherza testified that she retained Fortunato "the Friday" before the time-of-the-essence date of Monday, July 25, 2005. That means that she terminated respondent's representation on Friday, July 22, 2005,

without a reply from Yom. Certainly, respondent cannot be faulted for ceasing to work on her behalf, after that event. We, therefore, dismiss the RPC 1.1(b) and RPC 1.3 charges.

As to the allegation that respondent failed to adequately communicate with Sgherza, we note that respondent and Sgherza's accounts of events do not significantly differ. Respondent was quick to acknowledge that he did not write to Sgherza about events in this or other representations, because he saw her "all the time," on which occasions they would discuss her case. Letters were not a part of their pattern of practice, perhaps because respondent so rarely (only twice) charged a fee for his services.

So, too, when Sgherza was pressed to remember what information respondent had failed to disclose to her about the matter, she was unable to provide an answer, stating, "it's been too many years and too many bad memories."

Sgherza's son, Jiancarlo, too, implicated respondent in having failed to reply to his numerous telephone requests and to a note left at respondent's house, seeking information about the case, a few weeks before the time-of-the-essence date. Respondent countered that all of the telephone messages were left in one day, filling his in-box. Respondent was perplexed by

the alleged failure to communicate, further explaining that he told Sgherza several times in several different ways, that the liquor license was only one problem aspect of the purchase and that she was not likely to get town approval for a transfer, prior to completing her purchase. At the very same point in time, Jiancarlo was helping him shut down his law office. The Sgherzas knew that this event was due to respondent's illness and impending hospitalization for an extended period of time. Obviously, respondent thought it sufficient to advise Sgherza orally, not in writing, about the status of her matter.

Be that as it may, in the final analysis, respondent's representation ended on July 22, before the putative July 25, 2005 closing date. There was virtually no time for Sgherza to have been ill-informed about the status of her matter. True, respondent could have written to Sgherza about the status of the case, but she was "copied" on his July 16, 2005 letter to Yom, a letter that she did not deny receiving. Just days later, she sought other counsel. According to respondent, more appropriately, she just did not like the advice he was giving her.

With regard to ignoring email messages from Sgherza's two friends, we do not fault respondent for not opening them. He did

not recognize them as having come from his client. One was from a cleaning service and the other from a Hotmail account that he did not recognize.

Respondent was also faulted for failing to give Jiancarlo information, when Jiancarlo was helping him close down his law office and move boxes to his father-in-law's basement. Jiancarlo could not recall, when asked, if respondent had discussed the case that day. He added that respondent may have done so.

Overall, we find respondent's account of events believable, that is, that he did keep Sgherza informed about the short-lived representation. Understandably, she was upset that she could not transfer the liquor license and purchase the new property simultaneously and risk-free. However, this was not the result of a failure to keep her adequately informed about the events, as they transpired. Therefore, we dismiss the RPC 1.4(b) charge.

Respondent was also charged with having failed to memorialize the basis or rate of his fee, in writing. Here, he did not charge a fee. In addition, RPC 1.5(b) imposes that requirement only when the lawyer has not regularly represented the client. Respondent and Sgherza's testimony on the issue was consistent - respondent handled many matters over a ten-year period for Sgherza and her family. He did so regularly, never

charging legal fees (except in the 1999 and 2004 refinancings) or preparing fee agreements. We find, thus, that RPC 1.5(b) does not apply to the instant transaction. Respondent's representation amounted to his "swan song," helping a long-time client and friend, while closing down his practice, a matter handled free of charge.

The complaint also alleged that respondent failed to promptly return files and the remaining 2004 mortgage proceeds (presumably $154,000 minus the $68,000 deposit given to Yom). With regard to those funds, respondent testified that Sgherza received them, once she retained subsequent counsel. There is no evidence in the record (from Sgherza or otherwise) to contradict respondent's version in this regard.

As to the alleged failure to promptly deliver files, Sgherza conceded that respondent had returned the file in this matter. She complained, however, that she had sought all files from prior representations and that she had not received all of them from respondent. Respondent explained that some old files, older than those he was required to keep by R. 1:21-6, may have been lost in a basement flood. In any event, for lack of clear and convincing evidence that respondent failed to return the file in this matter or that he failed to promptly turn over the

2004 mortgage proceeds to Sgherza or to her new attorney, we dismiss the RPC 1.15(b) charge.

With regard to the charge that respondent violated RPC 1:26(c)(1)(D) and (E), it is likely that the DEC meant R. 1:20-6(c)(1)(D) and E. Even if so, that rule does not apply, because it deals with document retention, not the disbursement of funds. There is nothing in the record to suggest that respondent did not return the funds.

Finally, respondent was charged with a violation of RPC 8.1(b) for failing to turn over trust account records to the DEC. On this issue, respondent testified that he had given all of his trust account records to the OAE, pursuant to an audit demand, and had none to provide to the DEC. He also stated that he had met with an OAE investigator three times about this matter and that his records were in order. The OAE never brought charges related to his handling of the trust funds in Sgherza's matter.

So, too, respondent's counsel noted that the DEC never formally requested any trust account documents during discovery. Therefore, for lack of clear and convincing evidence that respondent failed to cooperate with the turn over of trust account documents, we dismiss the RPC 8.1(b) charges as well.

We are left, then, with a situation where all of the charges against respondent fail for a lack of clear and convincing evidence of any impropriety on his part. We, thus, dismiss the complaint in its entirety.

Members Stanton and Clark did not participate.

Disciplinary Review Board
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of John L. Blunt
Docket No. DRB 11-182

Argued: September 15, 2011

Decided: December 1, 2011

Disposition: Dismiss

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman				X		
Frost				X		
Baugh				X		
Clark						X
Doremus				X		
Stanton						X
Wissinger				X		
Yamner				X		
Zmirich				X		
Total:				7		2

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel