SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-143
District Docket No. XIV-2010-2012E

IN THE MATTER OF	
MICHAEL A. CASALE	
AN ATTORNEY AT LAW	

Decision

Argued: July 19, 2012

Decided: November 1, 2012

Vincent E. Gentile, a member of the Volunteer III Project, appeared on behalf of the Office of Attorney Ethics.

Robert Ramsey appeared on behalf of respondent.

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

This matter came before us on a disciplinary stipulation between respondent and the Office of Attorney Ethics (OAE). The OAE, through a volunteer attorney, recommends the imposition of a three-month suspension for respondent's violations of RPC

1.1(a) (gross neglect), RPC 1.4(b) (failure to communicate with the client), and RPC 1.7(a)(2) (conflict of interest). Respondent seeks a reprimand. For the reasons set forth below, we determine to impose a three-year suspension on respondent for his egregious misconduct vis-à-vis his client, an elderly and sickly widow, who was nearly ninety years old and of questionable competence.

Respondent was admitted to the New Jersey bar in 1973. At the relevant times, he maintained an office for the practice of law in Fairfield. Respondent has no disciplinary history.

The facts in our decision are taken from the parties' stipulation, dated April 2, 2012, and In re Estate of Stockdale, 196 N.J. 275 (2008), of which we take judicial notice.

Madeleine L. Stockdale's husband had been a successful banker. Upon his death, in 1965, he left her with substantial assets, including a Spring Lake mansion, where she lived alone, and which had fallen into disrepair. The Stockdales had no children and Stockdale had very few contacts with any relatives.

In March 1999, Stockdale agreed to sell her home to Ronald Sollitto, a podiatrist, for $1.3 million. Sollitto's attorney, Thomas Foley, prepared the contract of sale.

At the time, Stockdale was represented in the transaction by William Soons, of the Englewood law firm of Soons & Soons, which had represented her since her husband's death. Soons concluded that the deal was not in Stockdale's best interest and he informed Foley of his concerns, including the absence of any provision permitting Stockdale to reside in the home "as she wished and had been promised."

Foley did not reply to Soon's concerns. Instead, he prepared an addendum, which he gave to Sollitto, who took it to Stockdale. When Soons reviewed the document, he was still concerned, but Stockdale told him not to worry because she had decided against selling her home. Soons closed his file.

As it turned out, Sollitto and Stockdale continued to negotiate through the summer and into the fall of 1999. He convinced her to take back a purchase money mortgage, with no discussion about its amount or its rate.[1]

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[1] At the probate trial, an individual named Robert Lee testified that Stockdale had declined to loan him $160,000 for the purchase of a home, secured by a mortgage, because, according to her accountant, "she was too old to be in the mortgage business."

In September 1999, Sollitto arranged for a title search and title insurance through a friend, thereby bypassing the attorneys who had been involved in the transaction. At the same time, Stockdale was telling some acquaintances that she was not sure whether she had sold her home, while she told others that she had sold the home and had made a terrible mistake.

Between March and September 1999, Stockdale's health deteriorated. Her weight had dropped to ninety-six pounds. She suffered from decreased hearing and shortness of breath. She also had difficulty swallowing and regurgitated food, after eating. Although Stockdale's physician asserted that her cognitive abilities were functioning as late as September 1999, her acquaintances stated that, by October of that year, she appeared to be confused and she repeated stories.

In early December 1999, Stockdale fell and fractured her hip. She was taken to the hospital three days later, when a friend, who had been unable to get in touch with her, broke down the door to Stockdale's home and found her on the floor. Stockdale's doctor stated that, by mid-December, her condition was noticeably failing.

Sollitto visited Stockdale daily, during her hospitalization, and involved himself in her care, after leading

the medical staff to believe that he was a trusted friend. Her hip was repaired surgically. On December 14, 1999, she was transferred to Shore Rehabilitation Institute (SRI).

On December 18, 1999, Sollitto talked to Stockdale about the sale of her home. She replied that she wanted to talk to an attorney, but no one locally. Sollitto claimed that he had called Soons, but had received no reply, and that he had tried to retain another attorney, without success. The Soons firm denied receiving a call from Sollitto.

On December 21, 1999, Sollitto sent respondent to meet with Stockdale. According to the stipulation, when Sollitto arranged for respondent to represent Stockdale in the sale of her home, Sollitto explained that she was an elderly widow, who had been hospitalized recently, after breaking her hip in a fall. He also told respondent that Stockdale had asked him to recommend an attorney because, Stockdale complained, the Soons firm was "too far away" and Soons was "too old." Solitto further told respondent that, because of Stockdale's hospitalization and advanced age, they wanted to close on the sale of her home promptly.

At the time, respondent was Sollitto's attorney in an arbitration proceeding and had represented Sollitto in

approximately thirty other matters, over a span of fifteen years. Respondent also had represented Sollitto's wife, Patricia, in a personal bankruptcy matter.

In addition to their longstanding attorney-client relationship, respondent and Sollitto had a close social relationship. Respondent had been a member of Sollitto's wedding party, approximately seven years earlier, and they had dinner together several times a year.

Respondent, who did not know Stockdale, met with her at SRI on December 21, 1999. Prior to January 3, 2000, in all of his meetings with Stockdale, they were alone. After every meeting, respondent called Sollitto. Between December 18, 1999 and January 17, 2000, respondent spent 4.85 hours on the telephone, presumably with Sollitto.

According to respondent, at that first meeting, on December 21, 1999, Stockdale was sitting up in a hospital bed and appeared to be mentally competent. Respondent told her that he had represented Sollitto before on a number of matters and was presently representing him in an unspecified arbitration matter. However, respondent did not disclose to Stockdale that he had represented Sollitto in approximately thirty separate matters, over many years, that he had also represented Sollitto's wife in

a personal bankruptcy matter, that he was a member of Sollitto's wedding party seven years earlier, and that he had a social relationship with Sollitto and had dinner with him several times each year. Further, respondent did not discuss with Stockdale the risks or disadvantages of representing her at the same time that he had an ongoing client relationship and close personal friendship with Sollitto. Accordingly, respondent stipulated that his disclosure to Stockdale was not adequate to secure her informed consent to his representation.

At the December 21, 1999 meeting with Stockdale, respondent learned that, in addition to needing an attorney to represent her in the real estate transaction with Sollitto, she wanted to make changes to a will that she had executed in 1998. Respondent offered to undertake the necessary legal work to make those changes.

Respondent's next meeting with Stockdale at SRI took place on December 27, 1999, at which time they discussed the sale of her home. According to respondent, Stockdale agreed to accept $50,000 from Sollitto at the closing, with the remainder of the purchase price ($1.25 million) to be paid by a note and mortgage, at five percent interest. At the time, the market interest rate was seven to eight percent.

Respondent prepared the mortgage and a five-year note, calling for monthly payments at $4000 on the $1.25 million dollar mortgage loan. Yet, according to the stipulation, a five-year mortgage at five percent interest, amortized on a straight line method, would have yielded a monthly payment to Stockdale of $23,589.

At this same meeting, on December 27, 1999, respondent and Stockdale reviewed the 1998 will, which provided for her residuary estate to go to charity, specifically, the Spring Lake First Aid Squad (SLFAS). Stockdale, who was distrustful of others, made the bequest to a charity "partly out of respect for those who engaged in . . . selfless acts of kindness, but also because it would keep her assets away from the control of the government." In re Stockdale, supra, 196 N.J. at 284. Yet, respondent claimed that Stockdale no longer wanted to leave anything to SLFAS, because it had received funds from another source.

Respondent's third meeting with Stockdale was on either December 29 or 30, 1999. At that time, her state of health was precarious. She could not swallow and eat normally because of an obstruction in her esophagus that eventually required surgical removal. Indeed, earlier in the day, on December 29,

1999, Stockdale had undergone a failed procedure to place a tube directly into her stomach. Consequently, she had been placed on medication.[2]

According to respondent, at this third meeting, Stockdale stated that she wanted to leave her entire residuary estate to Sollitto because she liked him and his family. At respondent's suggestion, she agreed to include a provision, in her new will, forgiving any mortgage debt that might be owed upon her death because, as the residuary legatee, Sollitto would get the money anyway, after she died. Respondent conceded that, "once Mrs. Stockdale began to talk about making Dr. Sollitto the residual legatee of her estate, he should have recognized that a conflict of interest existed."

Respondent stipulated that Stockdale also told him that she wanted to replace the 1998 will's co-executors — her long-time attorney, William Soons, and a non-lawyer, Dr. Peter Kuzmick, a highly-regarded internist who had treated her in the past — with a sole executor, that is, respondent, who had essentially

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[2] On the afternoon of December 29, 1999, respondent had a thirty-two minute telephone conversation with Sollitto.

volunteered to assume the role. Respondent stipulated that this "represented a significant change from previous wills and drafts of wills," which had provided for at least two executors.

Respondent did not tell Stockdale that, as executor, he would be entitled to earn substantial commissions on the corpus and income from the trust. Under N.J.S.A. 3B:18-14, respondent, as executor, was entitled to approximately $73,592, assuming an estate valuation of $2,779,611. In addition, under N.J.S.A. 3B:18-13, he was entitled to a six percent commission on all income earned after the date of Stockdale's death.

Respondent did not discuss with Stockdale the estate tax implications if she executed the new will, such as the dramatic impact that changing the residuary beneficiary from a charity to an individual would have on the estate's obligation to pay taxes. In fact, the change in the residuary from a charitable institution (SLFAS) to an individual (Sollitto) resulted in a federal estate tax payment of $951,289, rather than what would have been a $7650 liability, under the 1998 will.

In preparing the new will, respondent used a copy of Stockdale's 1998 will, which she told him contained her handwritten alterations. Stockdale told respondent where to

find the 1998 will at her home. At respondent's direction, Sollitto went to get it.

Between December 29, 1999 and January 4, 2000, Stockdale was being treated with antibiotics, large doses of pain medication, and sedatives to help her sleep. She was scheduled for throat surgery, under general anesthesia, on January 4, 2000. According to the stipulation, all parties realized that, given the precarious state of Stockdale's health and impending surgery, it was even more imperative that they close title on the sale of her home to Sollitto. Respondent decided that she should execute the new will and the closing documents before the operation.

Sollitto's attorney for the transaction, Thomas Foley, was in Florida over the Christmas holidays and declined to return to New Jersey to complete the January 2000 closing. Respondent then dealt directly with Sollitto.

Foley had advised Sollitto, in a telephone conversation, that he should have Stockdale examined to determine her mental capacity, before she executed the deed. Neither Sollitto nor respondent raised the matter of a competency examination.

In the probate action that eventually ensued, the Supreme Court explained the course of events:

> Rather than waiting for Foley, who had been representing Sollitto, to return from a vacation trip he was then taking, [respondent] continued to effectuate the sale of the residence by preparing the real estate closing documents.
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> Sollitto testified that he telephoned Foley to tell him that Stockdale wanted to do the closing quickly and that her new lawyer had prepared the documents. When Foley replied, "I hope you had nothing to do with the selection of that attorney," Sollitto said that he had not. Sollitto promised that he would fax the closing documents to Foley for his review, but Foley testified that he never saw any of them. Foley never sent Sollitto a bill, nor was he paid for any of the work he did on the contract. [Respondent] never had a conversation with Foley, whom [he] described as having been "non-existent . . . from day one." [Respondent] also described having a buyer who lacked an attorney with whom he could communicate as "a little unusual."
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> [In re Stockdale, supra, 196 N.J. at 291-92.]

On January 3, 2000, respondent visited Stockdale with the new will, the "living will," a power of attorney, and the deed in hand. This was the day before she was to undergo throat surgery. Prior to this time, he did not provide Stockdale with a draft of the will to review, although he had visited her twice. However, according to the Court:

> Prior to the meeting with Stockdale on January 3, [respondent] prepared a letter to

> her advising her about some, but not all, of the conflicts of interest presented by his representation of her in light of his past, and his on-going, representation of Sollitto. In spite of the fact that he knew that she was in the hospital and about to undergo surgery, he sent the letter to her home. He did not ask her to sign it or acknowledge that she was aware of the conflicts; the letter, which [respondent claimed was sent] to her home even though she was not there, was not found after her death.
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> [In re Stockdale, supra, 196 N.J. at 292.]

The living will and power of attorney named Sollitto as the decision maker for Stockdale's interests. The new will named Sollitto as the residuary legatee of Stockdale's estate.

Stockdale's new will was witnessed by two staff members at SRI. At the probate trial, both witnesses testified that, despite the language of the attestation clause, they had attested only to Stockdale's signature and not to her competency, as per SRI policy. One of the witnesses, Sandra Clemento, testified that she had so advised respondent, prior to witnessing the will, on January 3, 2000.

Also, on January 3, 2000, Stockdale signed the deed, transferring the $1.3 million property to Sollitto. In exchange, Sollitto paid $50,000 to Stockdale. She did not receive a purchase money mortgage or mortgage note. Sollitto

did not pay the $1000 earnest money deposit provided under the real estate contract or make any of the $4000 monthly mortgage payments, after the closing.

Moreover, respondent included a general clause in the will, forgiving any indebtedness owed to the testator, a provision that resulted in the forgiveness of the $1.25 million mortgage indebtedness owed by Sollitto on the purchase of Stockdale's home.

In Stockdale's discussions with Sollitto leading up to the sale of her home to him, she had manifested her intention to continue to live there as long as possible. Yet, respondent did not prepare a use-and-occupancy agreement or otherwise negotiate with Sollitto to permit Stockdale to remain in the home for any period, following the execution of the deed, on January 3, 2000. Sadly, after Stockdale was released from SRI, Sollitto set her up in an apartment, where he arranged for a Russian-speaking school teacher to look after her, even though, presumably, there would be a communication issue between her and the English-speaking Stockdale.

The parties stipulated that Stockdale's mental capacity was likely impaired by her age, illnesses, and the medications she was taking and that she may not have understood the details and

consequences of the documents that she signed on January 3, 2000. Indeed, at the probate trial, the director of SRI, Dr. Alfred Hess, testified that, even though he had not examined Stockdale before she signed the will, he could opine that she lacked capacity to understand the documents "because she was taking pain killers and she was typically slightly confused during this time frame."

Stockdale died on April 18, 2000. Probate litigation ensued.[3] In that proceeding, respondent testified that he could not recall whether he had delivered the mortgage on the evening of January 3, 2000, the date of the document, or on January 4, 2000. Respondent's secretary, however, testified that the mortgage and mortgage note were created after January 3, 2000. Therefore, the parties stipulated, respondent did not review those documents with Stockdale on the day that she signed the deed to her home.

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[3] In addition to the civil litigation, the Monmouth County Prosecutor tried Sollitto and respondent on charges of theft and conspiracy. After a mistrial was declared, the Prosecutor elected not to re-try the case. "Monmouth First Aid Squad Can Seek Fees in Estate Fight." The Associated Press, July 22, 2008.

At the probate proceeding, respondent also testified that he and Sollitto had discussed only the real estate transaction, on January 3, 2000 and thereafter. They had not discussed Stockdale's will. Sollitto testified that he was unaware that Stockdale had named him in the new will, testimony that the probate judge found to be "incredible and false."

The probate court concluded that the 2000 will was unenforceable because it was the product of undue influence and that the 1999 real estate contract and 2000 deed, transferring Stockdale's property to Sollitto, were invalid as the product of undue influence and "sharp dealing." The 1998 will was admitted to probate.[4]

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[4] The issue before the Supreme Court was whether punitive damages could be assessed against a party in a probate proceeding who had engaged in "undue influence in the creation of a will or a testamentary trust, or in securing an inter vivos transfer of property in lieu thereof." In re Stockdale, supra, 196 N.J. at 457-58. The Court ruled in the affirmative and remanded the matter to the Chancery Division, Probate Part, for a determination on whether such an award was appropriate. Id. at 477.

Following a review of the record, we are satisfied that the stipulation clearly and convincingly establishes that respondent's conduct was unethical.

Preliminary to our discussion of the merits, we note that, although the parties stipulated to respondent's violation of RPC 1.7(a)(2), this rule was not in effect until 2004, whereas respondent's misconduct took place between 1999 and 2000. Instead, the applicable rule is former RPC 1.7(b). Nevertheless, the differences between the rules do not affect the outcome of this case. Thus, we see no need to remand the matter for the submission of a revised stipulation setting forth the correct rule against which respondent's conduct will be measured.

The applicable rule, former RPC 1.7(b), provided, in relevant part (emphasis added):

> (b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests. . . .

Current RPC 1.7(a)(2), which is not that different, defines this type of concurrent conflict of interest as one that involves "a significant risk that the representation of one or

more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

Under former RPC 1.7(b)(2), the representation may proceed if "the client consents after full disclosure of the circumstances and consultation." Under current RPC 1.7(b)(1), the representation may proceed if "each affected client" gives "informed consent, confirmed in writing, after full disclosure and consultation."

In this case, respondent was charged with having engaged in two conflicts of interest. First, at the request of his long-term client and longtime friend, Sollitto, respondent undertook the representation of Stockdale in a real estate transaction involving Sollitto's purchase of her million-dollar home. Second, respondent prepared a new will for Stockdale, which left everything to Sollitto, forgave the million dollar loan that she had given to him, and named respondent executor of her estate.

"One of the most basic responsibilities incumbent on a lawyer is the duty of loyalty to his or her clients." Tartaglia v. UBS PaineWebber, Inc., 197 N.J. 81, 111 (2008) (quoting In re Opinion No. 653 of the Advisory Comm. on Prof'l Ethics, 132 N.J. 124 (1993)). When an attorney becomes involved in a conflict of

interest, that duty of loyalty may be compromised, as it was in this case.

With respect to the real estate transaction, respondent's favoring Sollitto, a friend, over Stockdale, his client, was nothing short of outrageous. Stockdale did not seek out respondent's representation. Rather, respondent represented Stockdale at Sollitto's request. In light of his longstanding attorney-client relationship with Sollitto, as well as their close friendship, his representation of Stockdale might have been "materially limited" by Sollitto's interests (former RPC 1.7(b)). Respondent so stipulated.

Respondent also stipulated to having failed to provide full disclosure to Stockdale about his business and social relationship with Sollitto, limiting the details to his current representation of Sollitto in an arbitration proceeding and his previous representations in an unspecified "number of matters," and remaining silent on all other aspects of their relationship.

Thus, as respondent stipulated, his disclosure was not adequate, under former RPC 1.7(b)(2).[5]

For the same reasons, respondent's representation of Stockdale in the preparation of her will, leaving her residuary estate to Sollitto, and the advanced medical directive and power of attorney, naming Sollitto as her decision-maker, represented an impermissible conflict of interest. Respondent so stipulated. He also stipulated to the insufficient disclosure that he had made to Stockdale, prior to representing her in the preparation of the new will, about his professional and social relationship with Sollitto.

Thus, as the parties stipulated, respondent engaged in an impermissible conflict of interest when he represented Stockdale in the sale of her home to Sollitto and when he prepared a will that left her entire residuary estate to Sollitto, and also prepared an advanced medical directive and power of attorney, which named Sollitto as her decision maker.

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[5] In our view, even a full disclosure would have been pointless, given Stockdale's age and both her physical and mental health.

Respondent also was involved in a third conflict of interest, that is, his facilitation of the $1.25 million mortgage from Stockdale to Sollitto. The representation of one client as the creditor in a loan transaction with another client, who is the debtor, in the absence of full disclosure, consultation, and consent, is a violation of former and current RPC 1.7(a)(1). See, e.g., In re Turco, 196 N.J. 154 (2008) (attorney recommended that an individual client invest in his corporate client by making an unsecured loan to the corporation and then represented the individual client in the loan transaction). Here, as debtor and creditor, Sollitto's and Stockdale's interests were clearly adverse. Respondent did not provide full disclosure to Stockdale and obtain her informed consent, prior to facilitating the loan. Therefore, he engaged in an impermissible conflict of interest.

Although the stipulation does not cite the loan arrangement as a conflict of interest, we considered this additional conflict as an aggravating factor, as seen below, when we assessed the appropriate measure of discipline to impose on respondent for his misconduct.

With respect to the stipulated gross neglect (RPC 1.1(a)) violation, in our view, respondent did not neglect anything.

Rather, his actions were all quite intentional. Those actions, as well as the lack of disclosure to Stockdale (stipulated as violations of RPC 1.4(b) and (c)), are more properly the unfavorable consequences to Stockdale from the sale of the house and the preparation of the new will caused by the egregious conflicts of interest in which respondent immersed himself.

There remains for determination the appropriate quantum of discipline to be imposed for respondent's conflicts of interest in which he had embroiled himself.

Since 1994, it has been a well-established principle that a reprimand is the minimum measure of discipline imposed upon an attorney who engages in a conflict of interest. In re Berkowitz, 136 N.J. 134, 148 (1994), and In re Fitchett, 184 N.J. 289 (2005) (declaring Berkowitz to be alive and well and stating that, at a minimum, a reprimand is to be imposed when an attorney engages in a conflict of interest). If the conflict involves "egregious circumstances" or results in "serious economic injury to the clients involved," discipline greater than a reprimand is warranted. Berkowitz, supra, 136 N.J. at 148. See also In re Guidone, 139 N.J. 272, 277 (1994) (reiterating Berkowitz and noting that, when an attorney's

conflict of interest causes economic injury, discipline greater than a reprimand is imposed).

The facts of this case cry out for a long-term suspension. This case involves both egregious circumstances and serious economic injury to the client, an elderly, sickly widow of questionable competence.

As Stockdale's lawyer, respondent facilitated the sale of her $1.3 million home to his friend and client in an arrangement that (1) resulted in her receipt of only $50,000 at closing, (2) placed her in the position of mortgagee on a $1.25 million loan, which represented nearly ninety-five percent of the purchase price, at a below-market interest rate, with payments of only $4000 per month, not one of which was ever made prior to her death, (3) failed to make arrangements for her to remain in the home legally, as she had wished and as Sollitto had agreed, and (4) drafted a will that contained a clause forgiving Sollitto's payment of the $1.25 million loan upon her death. Thus, respondent's representation of Stockdale resulted in the sale of her $1.3 million home for $50,000 to his friend Sollitto, who sent her to live in an apartment with a "caregiver" who, apparently, did not speak English fluently.

That respondent's loyalties were divided is all the more clear when the 1998 will is examined against the 2000 will. The 1998 will had two co-executors and left the residuary estate to charity. The 2000 will had a single executor – respondent, who had volunteered for the position – and left the residuary estate to Sollitto. As stated previously, the change in the residuary beneficiary increased the federal estate tax liability from just over $7500 to nearly $1 million. Yet, respondent never paused in the face of such a dramatic shift in intention and consequence and he never discussed the impact of such a change with his client, Stockdale. Indeed, he never even reviewed the will with Stockdale, before she signed it.

Although it is standard estate planning practice to prepare an advanced directive and power of attorney along with a will, there is no evidence in the stipulation that respondent had discussed these additional documents with Stockdale and that she had expressed the desire to have Sollitto serve as the decision-maker. It appears that he just showed up with these documents on January 3, 2000, when he conducted the closing on the sale of Stockdale's house and had her sign the new will.

Standing alone, these two situations represent egregious acts of disloyalty. However, when these acts are considered in context, respondent's behavior shocks one's conscience.

At the time respondent undertook the representation of Stockdale, she was ninety years old, in very poor health, and of questionable competence. Indeed, when Sollitto asked respondent to represent Stockdale, he told respondent that "they" wanted to close on the sale of the house quickly because of her age and medical condition. Rather than raise respondent's eyebrows, Sollitto's entreaty propelled him forward.

Respondent, who should have had the utmost concern for his client, had none. His only concern was for Sollitto and, in that regard, he worked to move everything along as quickly as possible, before Stockdale went under the knife on January 4, 2000, thereby ensuring that his good friend and long-time client, Sollitto, would get the house and the estate before she might die.

On January 3, 2000, without concern that his client was to undergo surgery on the following day, without concern that Sollitto's own attorney, Foley, could not be at the closing, and with full knowledge that Stockdale was likely impaired by her age, illnesses, and medications, respondent decided that she

should execute all documents on that day, and he saw to it that that took place. Respondent had accomplished what Sollitto had asked him to undertake just a few weeks before and none of it was to his client's benefit.

Here, the circumstances involving the conflict were egregious and Stockdale suffered great economic harm. Unfortunately, this is not the first time an attorney has acted so contrary to the duty of loyalty owed to a vulnerable client. 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, who had difficulty speaking and understanding English, and who was of questionable competence, in the sale of his home to a friend of respondent, with whom he also maintained a business relationship). As shown below, the similarity between Tormey and the case now before us is striking.

In Tormey, the attorney had represented Dennis Rafael, a Portuguese national who had difficulty speaking and understanding English, in several matters, on a pro bono basis, between 1992 and 1994. In the Matter of Terrence P. Tormey, DRB 06-213 (November 21, 2006) (slip op. at 3).

In 1994, Tormey also "maintained a friendly and business relationship" with the owner of Emerald Isle Realty (EIR), John McShane, Jr. Id. at 4. Tormey prepared EIR's certificate of incorporation, served as its registered agent, and his wife was an EIR officer. Ibid. Tormey also represented McShane in several real estate matters through September 2001. Ibid.

In the fall of 1995, Tormey learned that Rafael wanted to sell his home. Ibid. He arranged a meeting between Rafael and McShane, which resulted in an agreement of sale for $65,000, which Tormey had prepared. Ibid. Tormey represented Rafael in the sale of his home to McShane, without having disclosed to his client the nature of his relationship with McShane and without having obtained the necessary waiver from him. Id. at 5.

The contract that Tormey prepared called for Rafael to hold a $61,000 mortgage from McShane and scheduled a closing date for October 31, 1995. Ibid. Due to a title search issue, the closing did not take place until January 1997. Ibid.

In the meantime, in December 1995, a social services agency determined that Rafael was not capable of managing his financial affairs and requested that Tormey prepare a power of attorney, which Rafael signed. Id. at 6. Thereafter, Tormey collected Rafael's income and paid his bills, without charge. Ibid.

In January 1996, a doctor examined Rafael and determined that he was "confused, not oriented to time, place or person and a poor historian." Ibid.

When the closing took place in January 1997, Tormey acted as Rafael's closing agent. Id. at 7. Although the RESPA stated that Rafael had received $3,089.95 in net sale proceeds, he had received nothing. Ibid. No mortgage was executed at the closing or recorded. Id. at 8. Instead, Rafael was given a $48,00 promissory note. Ibid.

In February 1997, McShane mortgaged Rafael's former home for $65,399.39. Ibid. Because the McShane-to-Rafael mortgage had never been executed or recorded, McShane's second mortgage became the first lien. Ibid. McShane defaulted, and Rafael never received any money from the sale of his home. Ibid.

In addition to the sale of the home, McShane and Rafael had agreed that Rafael could remain in his home after the closing, until he returned to Portugal. Id. at 9. Accordingly, Tormey prepared a use and occupancy agreement. Ibid. The agreement required Rafael to pay rent to McShane during the time that Rafael still owned the home. Id. at 9-10.

Finally, the use and occupancy agreement required Rafael to give McShane a $7500 repair credit at closing for cleaning and

repairs made to the premises, regardless of whether they were actually done. Id. at 10-11. Rafael had no idea that this constituted a reduction in the sale price of his home. Id. at 11. Tormey did arrange for the cleaning and repairs. Id. at 11-12.

We found that Tormey had engaged in a conflict of interest, a violation of RPC 1.7(a), when he represented Rafael and McShane in the real estate transaction. Id. at 21-22. We also found that Tormey's representation of Rafael could have been (and, in fact, was) materially limited by his responsibilities to McShane, Tormey's friend and business associate. Id. at 22. We further found that Tormey had failed to make the required dislosures to Rafael. Ibid.

In imposing a two-year suspension, we noted that, in addition to the presence of egregious circumstances and substantial economic injury to Rafael, other factors aggravated the misconduct, namely, Rafael's age, his difficulty with the English language, his bouts of disorientation, and Tormey's awareness of his inability to care for himself and his personal and financial affairs. Id. at 25-26. We noted that, although Tormey had represented Rafael in the sale of his home, the deal

had worked to McShane's advantage, leaving Rafael with nothing. Id. at 27.

The case now before us is worse than Tormey. In Tormey, Rafael sold his $65,000 house for nothing. Here, Stockdale sold her $1.3 million home for $50,000. In Tormey, Rafael wound up paying rent to live in his own home, between the date of the agreement of sale and the actual closing. Here, Stockdale never had the advantage of a use and occupancy agreement because respondent never prepared one and she was kicked out of her home as soon as Sollitto gained title to the property, while he used her money, under the power of attorney prepared by respondent, to pay the utilities on the house that he now owned and where she no longer lived. In addition, in this case, Stockdale was ninety years old and in extremely poor health, and respondent worked hard to get all deals accomplished within a two-week period before she was to undergo surgery. Finally, respondent engaged in another conflict of interest, when he facilitated the $1.25 loan from Stockdale to Sollitto.

If there was any possibility that the unethical conduct of the attorney in Tormey could be outdone, it became reality with respondent's appalling behavior in this case. Unquestionably, a

three-year suspension is the appropriate measure of discipline for respondent's misconduct.

One final point requires mention. Office of Board Counsel received a brief from counsel for respondent, on July 6, 2012, which was well beyond the given deadline. Over the OAE's objection, we elected to read the brief. As a result of that review, we are compelled to comment upon some of the statements made therein. First, counsel states that it was Sollitto, not Stockdale, who was affected by the increased tax liability. This argument overlooks the fact that Stockdale wanted her estate to have as little tax liability as possible because she disliked government and wanted to keep her money away from it.

Second, counsel argues that the passage of time is a mitigating factor. Ordinarily, this may be the case, if the delay is the fault of the disciplinary authorities. Such is not the case here. This matter was delayed by respondent's criminal trial and by the will contest.

Third, counsel's claim that there was no harm to "the purported victim" in this matter is stunning. As Stockdale's lawyer, respondent facilitated the sale of her $1.3 million home to his friend for $50,000. We are hard-pressed to understand how that was not harm to Stockdale and how she was not a victim.

Finally, counsel made the astonishing claim, in his brief, that his client was exonerated after a lengthy criminal trial. This is not true. The judge declared a mistrial in that matter and the Prosecutor elected not to proceed.

Member Doremus voted to disbar respondent. Member Clark did not participate.

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
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 Michael A. Casale
Docket No. DRB 12-143

Argued: July 19, 2012

Decided: November 1, 2012

Disposition: Three-year suspension

Members	Disbar	Three-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Clark						X
Doremus	X					
Gallipoli		X				
Wissinger		X				
Yamner		X				
Zmirich		X				
Total:	1	7				1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel