

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB. 95-032

IN THE MATTER OF :
:
ROBERT J. SAYPOL :
:
AN ATTORNEY AT LAW :
:

Decision
of the
Disciplinary Review Board

Argued: March 15, 1995

Decided: August 11, 1995

Richard R. Slavitt appeared on behalf of the District VB Ethics Committee.

Jon R. Skolnik appeared on behalf of respondent.

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

This disciplinary matter arose from a one-count complaint charging respondent, Robert J. Saypol, with RPC 1.1(a) (gross negligence); RPC 1.7(c) (conflict of interest); RPC 1.15(b) (safekeeping property); RPC 4.1(a)(1) (knowingly making a false statement of material fact or law to a third person); RPC 4.1(a)(2) (failure to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client); RPC 4.3 (dealing with an unrepresented person); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

These charges stemmed from respondent's actions in a real estate closing in which respondent represented a real estate agent.

The agent purchased property that was listed for sale with him by the owner, the grievant in this matter. It was alleged that the purchase price was below the fair market value of the property. The grievant, Rickey Towles, was not represented by counsel and relied upon the realtor and respondent. Shortly after the grievant signed the deed to the property, the realtor resold the property for \$18,000 more than what he had paid. After the grievant filed an ethics grievance, respondent obtained a document signed by the grievant releasing respondent from all charges against him.

The grievance in this matter was filed in November 1988. Because of various procedural problems, including a witness's failure to appear at one of the scheduled hearing dates, a change in investigators and a change in presenters, this matter was not heard until March 3, 1992. On March 2, 1992, the lay member of the District VB Ethics Committee ("DEC") panel scheduled to hear this matter advised the panel chair that a conflict prohibited him from appearing at the hearing the next day. The parties then agreed that the matter should proceed before a two-member panel.

* * *

Respondent was admitted to the New Jersey bar in 1983. He maintains an office in West Orange, New Jersey and has no prior ethics history. According to respondent, approximately ninety-five percent of his practice involves real estate and mortgage banking matters.

The facts are as follows:

Rickey Towles,¹ the grievant herein, and his estranged wife, Carol Towles, were the owners of a two-unit dwelling in Newark, New Jersey. At the time of respondent's alleged unethical conduct, Carol Towles was in South Carolina.

According to Towles, he had fallen in arrears with his mortgage payments on the Newark property and, therefore, had gone to the HUD office in Newark to either obtain a homeowner's loan or to refinance his existing mortgage. Someone at the HUD office recommended that he contact Ameer Saleem (a/k/a Ronald E. William). Saleem, a licensed real estate agent, operated Empire Realty and Investment Company ("Empire") in Irvington, New Jersey.

Towles testified that he contacted Saleem to have him appraise his property. Saleem told him that he wanted to market the house for \$49,000. As a result, Towles decided to sell his property to avoid foreclosure proceedings. Towles believed he owed \$8,000 on the existing mortgage. Upon the sale of his property, he planned to pay off the mortgage and invest the remainder of the proceeds from the sale on another property.

On or about August 5, 1987, Towles signed a listing agreement with Empire for a \$35,000 sale price, with a ten percent broker's commission. Exhibit P-1. Carol Towles did not sign the agreement. Although Towles testified that he never saw the listing agreement, he acknowledged that his signature appeared on the document.

¹ The grievant's name was misspelled as "Towels" in the transcript of the DEC hearing.

Towles did not know whether Saleem ever showed the property to any prospective purchasers, but he believed that one of Saleem's employees might have been interested in purchasing the property. Nothing came of it though. In the interim, Towles had been receiving letters from his mortgage company threatening foreclosure proceedings. Shortly after Saleem accepted the Towles listing, Saleem himself offered to purchase the property, if Towles agreed to lower the purchase price.

On or about September 17, 1987, a contract of sale was executed between Towles, as seller, and Saleem, as buyer. The purchase price of \$25,000 was to be paid by a deposit of \$1,000; a possible assumption of the first mortgage in the amount of \$5,000 by Saleem; a purchase money mortgage from Towles to Saleem for \$10,000; and the balance in cash.

Thereafter, respondent ordered and received a title commitment from the American Title Insurance Company. Exhibit P-4. It is not clear from the record when respondent actually ordered or received the title commitment. Prior, however, to the unorthodox "closing" between Towles and Saleem on October 19, 1987, which will be discussed more fully below, Saleem entered into a contract to resell the Towles property to Jerry and Gilda Otelsberg for \$43,000. Towles was not advised of the resale.

Towles' recitation of the events that transpired on October 19, 1987 differs greatly from that of respondent. Towles claimed that he was never notified to go to Saleem's office for a closing. He claimed that he was a "union painter" and that he often stopped

at Saleem's office because he had been doing work for Saleem. According to Towles, on October 19th, he stopped at Saleem's office with a female friend, Sylvia Harris, to get money from Saleem for work he had been doing in the building. Respondent was already there when he and Harris arrived. Saleem introduced respondent as either "that's an attorney" or "that's the attorney". T42, 62². Towles claimed that he did not believe that he needed his own attorney to represent him in the transaction that took place that day and added that he had not been advised otherwise. T37. Towles believed that he could rely on respondent and that respondent was "there to see that everything went right." T24.

Towles was asked to sign a deed conveying the property from himself and his wife to Saleem. Although Towles contended that no one had explained to him what the document was, he knew it was a deed. He signed his own name on the deed and also signed the name "Carol Towles." T17. According to Towles, he did not introduce Harris as his wife. Nevertheless, since his wife was not present, Saleem told Towles, "I don't care who [Sylvia Harris] is, she can sign [the deed]". Harris, however, refused and responded: "I'm not his wife, I'm not signing anything." Thereafter, Saleem told Towles to sign it. T51. Respondent watched Towles sign the deed, apparently heard Saleem's statement and failed to comment on the impropriety of that action. Respondent witnessed and acknowledged both signatures.

² T denotes the transcript of the March 3, 1992 DEC hearing.

While Towles knew the sale price for his property, he was not aware of the amount of the proceeds he would realize from the sale because no one had reviewed the existing liens or mortgage pay-off with him. Towles was aware, however, that the existing mortgage had to be paid off. He believed that Saleem would hold the remaining proceeds, to be used toward the purchase of another property.

Sometime after December 1987, Towles was provided with a closing statement. Neither Saleem nor respondent explained to Towles the figures contained on the closing statement.

Towles received a series of checks from Saleem. From the record, it cannot be established with certainty whether, as Towles claimed, the checks were for services Towles had rendered to Saleem or were the proceeds from the sale of Towles' property.

It was not until sometime after December 1987 — two months after the closing — that Towles became aware of the resale of his property to the Otelsbergs for \$43,000. T43. The discovery was accidental. During one of Towles' trips to Saleem's office, he happened to see papers from the Otelsberg closing on Saleem's secretary's desk. It was at that point that Towles learned that his property had been resold for a large profit. T57. Apparently, Towles finally received approximately \$4,000 from Saleem, but the record does not establish the source of the funds. Presumably, the amount represented a partial payment from the proceeds of the sale of Towles' property. Towles, however, was still owed \$3,000. T56.

According to respondent, he had received a call from Saleem on October 19, 1987, informing him that Saleem and Towles were ready to close. Prior to that date, he had forwarded to Saleem the title work, because Saleem had indicated that he would forward it to Towles' attorney. Contrary to Towles' testimony, respondent claimed that, when he arrived at Saleem's office, Towles was already there, along with a woman who was introduced to him as Carol Towles. Respondent testified that, because no other attorney was present, he advised Saleem and Towles that there could not be a closing. Respondent also claimed that, at that time, Towles was aware that his property was to be resold, because he was to perform certain repairs for the new buyers.

Respondent claimed that he had a blank deed with him, which was subsequently prepared by Saleem's secretary. Thereafter, the deed was signed by Saleem, Towles and Sylvia Harris, whom he believed to be Towles' wife. T69-70. Respondent added that he explained the deed to Towles, but was not representing him. Yet, based on respondent's explanation and Towles' reliance thereon, Towles signed the deed. Respondent also claimed that he was not aware of the "financial agreement" struck between Towles and Saleem. The two had worked out the finances between themselves and respondent failed to inquire what was "worked out"; he was not interested. T177. Respondent also felt that Towles was sufficiently sophisticated in real estate transactions to represent himself. T177. Towles, however, had only been involved in one other real estate transaction: the purchase of the subject property

from his father. Respondent also stated that, because the sale involved very little money, Towles did not want to retain an attorney and respondent could not force him to get one.

Respondent represented Saleem in both the purchase and the resale of the Towles' property. He recalled discussing the resale with Saleem and advising him that his actions might be questioned. Respondent also stated that he never informed Towles of the resale of the property to the Otelsbergs, claiming he believed that Towles was represented by an attorney, notwithstanding that respondent had no contact with any other attorney.

After the "closing" on October 19, 1987, there were no funds placed into respondent's escrow account and he did not collect or disburse any moneys in connection with the transaction. T82. Although respondent did not see any money change hands, it was his understanding that Saleem and Towles had worked out that aspect of the transaction. T88. He never inquired about any financial agreement reached between the two. As the buyer's attorney in the transaction with Towles, respondent also failed to prepare a RESPA statement for the "closing". T96. The money required to pay off the liens and mortgages in the Towles/Saleem transaction was to come from the Otelsberg closing. T97. Respondent held the deed from Towles to Saleem in his file until the Otelsberg closing, at which time both deeds were filed. Respondent, however, failed to provide Towles with any document to establish what would become of the deed if no closing occurred between Saleem and the Otelsbergs. T119. Respondent knew that there were liens against the Towles

property, including an outstanding mortgage. He claimed that he knew that he had the responsibility, as the buyer's attorney, to make sure that the liens against the property were discharged and he felt that he was taking care of that by not recording the deed until the Otelsberg closing occurred. T151. Apparently, however, it was the Otelsbergs' attorney who satisfied all outstanding liens and recorded both deeds.

Despite respondent's stated recognition of his duties as the buyer's attorney, several documents had not been prepared, such as, for example, a settlement statement showing the proceeds to which Towles was entitled as a result of the "sale." Respondent also admitted that he did not have Towles sign an affidavit of title at the "closing" because he did not have one with him. He claimed that "Saleem was going to take care of it." T149. Apparently, respondent did eventually prepare a settlement statement (Exhibit G-7), with a date of December 11, 1987. Respondent admitted that the document was prepared after the Otelsberg closing, although it was dated the same date as the closing. The document was prepared at Saleem's request for Towles' benefit to indicate the moneys to which Towles was entitled. According to respondent, the document was not meant to be a legal form, "it was meant as an information sheet." T153. Pursuant to Exhibit G-7, Towles was entitled to \$7,000. Respondent, however, did not know whether Towles ever received that amount because he "wasn't privy to the agreement between Mr. [Towles] and Mr. Saleem." T155. Respondent further claimed that the document did not bear the date of the Otelsberg

closing; it simply referred to "figures as of that date." Contrary to respondent's earlier statement, he admitted that Towles may not have been aware of the Otelsberg closing prior to accidentally learning about it in December 1987. T156.

* * *

Respondent had no further dealings with Towles until he learned that Towles had filed an ethics grievance against him. Towles had also filed a complaint against Saleem with the Real Estate Commission. At that point, Towles was represented by an attorney. Nevertheless, it appears that respondent had Saleem contact Towles, rather than Towles' attorney, to work out the matter.

According to Towles, sometime after he filed the grievances, Saleem called him to see a house because they needed "to get the ball rolling." T44. It appears that Saleem's call was a pretext to get Towles into Saleem's office so that respondent, Saleem and Towles could discuss a document releasing both respondent and Saleem from any ethics or other complaints filed against the two. While Towles apparently signed a release, he had no recollection of doing so. Instead, Towles recalled signing a piece of paper in Saleem's office, which may have been blank, in connection with viewing property to purchase. The release used by respondent (Exhibit G-11), however, was a standard Allstate release form that contained standard language. Saleem told Towles, "don't worry about the rest of the stuff [meaning the contents of the document]

[Saleem] would fill it in."

Respondent admitted that he prepared a release for Towles' signature, but did not recall whether he prepared it prior to or during the March 1989 meeting with Towles. Respondent had earlier admitted that he had brought a form of release in his bag "in case everything would be worked out." T131. This admission, coupled with Towles' claim that the release was not thoroughly explained to him, that he did not realize that he was releasing Saleem and respondent from any wrongdoing and that he did not recall signing a release, at a minimum, implies that Towles may have signed the release, believing that it was some other document. According to respondent, however, during the meeting Towles signed the release for two reasons. First, Saleem convinced him that the property he had bought from Towles was not the same as that conveyed to the Otelsbergs because of the repairs that Saleem was required to make. Towles was, therefore, not entitled to more money from the sale. Second, respondent explained that he had never represented Towles, only Saleem. T133-134.

On or about March 28, 1989, respondent obtained Towles' signature on the release, then witnessed and acknowledged it. T135. Respondent assumed that Towles would notify the ethics committee of the release, thereby ending the pending ethics matter against him. Respondent never advised or suggested to Towles that he obtain the advice of his counsel with respect to the release.

* * *

In passing on the credibility of the witnesses' conflicting testimony, the DEC concluded that Towles' testimony of the events that transpired was the credible version:

The Panel because of the overall picture and having observed the demeanor of the witnesses and having heard the testimony and noted the tenor of the voices, etc., frankly, is of the opinion that the accurate description of what took place in the room is that given by Mr. Towles and not that given by [respondent]. It believes that [respondent] was in fact aware that the lady in the room was not the wife of Mr. Towles and that he, as attorney for Mr. Saleem, participated in what took place in order to aid his client in connection with the profit to be made through the Otelsberg closing which was to follow.

[Panel report at 13-14].

The DEC concluded that, while respondent did not directly represent Towles, his actions in connection with the Towles/Saleem closing and with securing the general release from Towles were improper and unethical. The DEC found that, even though respondent was aware that Towles was not represented by an attorney, respondent permitted the closing to proceed, knowing that Saleem already had a "deal in process" to resell the property for a significantly higher price. The DEC concluded that it was improper for respondent to allow the matter to proceed, knowing of the employer/employee relationship between Saleem and Towles and recognizing that Towles was unsophisticated in such matters. The DEC found that respondent's failure to protect Towles from his own lack of knowledge was a violation of RPC 4.3.

The DEC also found that respondent violated RPC 4.1, by failing to disclose certain facts to Towles, which, if known, would

have revealed Saleem's self-dealing.

The DEC believed that respondent "covered up and hid" Saleem's overreaching and the fact that Saleem was in breach of his fiduciary duty to Towles. In the DEC's opinion, respondent should have either removed himself from the transaction or refused to allow the closing to occur; by failing to do so and actually participating in Saleem's scheme, respondent violated the Rules of Professional Conduct.

The DEC noted that its conclusions as to the facts were reinforced by respondent's action in securing a general release from Towles in a situation where Towles was unrepresented by counsel. The DEC found that respondent's conduct in this regard was even more egregious because, even though respondent was aware that Towles had retained an attorney, respondent improperly chose to deal directly with Towles. In the DEC's view, the fact that respondent secured the release after becoming aware of Towles' grievance aggravated respondent's improper conduct. The DEC, therefore, found that respondent's conduct was again a violation of RPC 4.3 and that respondent should have insured that Towles was independently represented by counsel before accepting his signature on the release.

* * *

Following a de novo review of the record, the Board is satisfied that respondent's conduct was unethical. The Board is unable to agree, however, with all of the violations found by the

DEC. There is no clear and convincing evidence that respondent violated RPC 1.7, RPC 1.15, RPC 4.1 and RPC 4.3. There is no question, however, that respondent's conduct in connection with the release was improper.

At the time that Towles filed an ethics grievance against respondent, he was represented by counsel. Saleem called Towles into his office under the pretext of looking at a piece of property. When Towles appeared, without his attorney, respondent and Saleem persuaded him to abandon any disciplinary claims he had against them. Respondent admitted that Towles signed a release (Exhibit G-1) in favor of Saleem and respondent because the two convinced him that the property was not as valuable when it was initially sold by Towles and that respondent never represented Towles at the "closing."

Respondent admitted preparing the release in an attempt to terminate the ethics proceedings against him. In In re Wallace, 104 N.J. 589 (1986), the Court determined that an attorney's attempt to limit his liability for ethics violations exhibited an extreme indifference to the intent of the disciplinary rules. The Court stated that the "[p]ublic confidence in the legal profession would be seriously undermined if we were to permit an attorney to avoid discipline by purchasing the silence of complainants." Id. at 594. The Court found that the attorney had violated DR 6-102(a) and imposed a six-month suspension. The Court also found violations of gross negligence and failure to maintain adequate records.

In this matter, respondent's attempt to be released from any ethics responsibility was similarly improper and a violation of RPC 8.4(d) (engaging in conduct that is prejudicial to the administration of justice). The Board finds that the DEC's reliance on RPC 4.3 in this regard is misplaced. (While the complaint did not specifically cite a violation of RPC 8.4(d), it alleged facts that constitute improper conduct under RPC 8.4(d), thereby providing adequate notice to respondent. See In re Logan, 70 N.J. 222, 232 (1976)).


As noted above, the Board did not find clear and convincing evidence in the record of the remaining violations alleged in the complaint — although it did find respondent's conduct in the Towles/Saleem transaction to be highly questionable. For respondent's misconduct in connection with the release, a five-member majority of the Board imposed a reprimand. One member agreed with the DEC's findings and voted to impose a one-year suspension. Three members did not participate.

The Board further directs that respondent reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: _____

8/11/95

By: _____



Raymond R. Trombadore
Chair
Disciplinary Review Board