B

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 95-491

IN THE MATTER OF	:
MICHAEL LESSACK	:
AN ATTORNEY AT LAW	:

Decision

Argued: March 20, 1996

Decided: November 20, 1996

Melinda L. McAllister appeared on behalf of the District IIB Ethics Committee.

Respondent appeared pro se.

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

This matter was before the Board based on a recommendation for discipline filed by the District IIB Ethics Committee ("DEC"). The formal complaint charged respondent with a violation of RPC 4.1(a)(1) (knowingly making a false statement of material fact or law to a third person) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) arising out of respondent's improper taking of a jurat on two occasions.

Respondent was admitted to the New Jersey bar in 1979 and is engaged in practice in Fort Lee, Bergen County. He has no history of discipline.

In or about October 1988, Sibig & Co. ("Sibig"), a general partnership, entered into a mortgage agreement with Morsemere Federal Savings Bank ("Morsemere"). Sibig consisted of five

somebody was going to come in at a later date and do an initialing or provide [him] with a power of attorney," respondent replied, "[j]ust out of habit. It was there. I initialed it. The only thing I was going to change is type in the clause by his attorney in fact." T24.

Respondent testified that, after he learned of the problems with the documents, he contacted the bank and offered to remedy his error. The bank did not accept his offer or further seek his help.

On an undisclosed date, Resolution Trust Corporation, conservator for Metrobank Federal Savings and Loan (the successor-in-interest to Metrobank), filed suit against the Sibig partners, including Gary Friedman, for non-payment of the mortgage. The court determined that Gary Friedman's signature had been forged and referred the matter to the DEC.

The DEC determined that respondent had violated RPC 4.1(a)(1) and RPC 8.4(c), violations which respondent admitted.

* * *

Upon a de novo review of the record, the Board is satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct was fully supported by clear and convincing evidence. The Board disagrees in part, however, with the DEC's conclusions.

The DEC report referred to two instances of forgery. In respondent's letter to the DEC dated November 21, 1995 and in his brief to the Board, respondent pointed out that that finding was inaccurate. Indeed, respondent was correct. As noted above in

connection with the February 1990 document, Gary Friedman's initials were not forged; they were not on the document.

The DEC determined that respondent violated RPC 4.1(a)(1) and RPC 8.4(c) on two separate instances. The Board disagrees. Those rules require a finding of intent on respondent's part, which the Board does not find present in this case. More properly, respondent was guilty of gross negligence in signing the two attestation clauses, in violation of RPC 1.1(a).

With regard to the first instance, respondent signed an attestation clause stating that Gary Friedman had come before him and initialed the mortgage, assuming that he would do so in the future. This argument is plausible. Indeed, respondent held the mortgage document in his file, rather than sending it to the bank. Furthermore, as respondent pointed out in his answer, he had no intent to mislead the bank since a cursory review would reveal that only four sets of initials were on the mortgage. Unfortunately, respondent signed the attestation clause before the fact. That act, combined with his failure to note on the mortgage or on the file that it was not ready to be sent to the bank, was, at minimum, negligent. Although respondent was not specifically charged with a violation of RPC 1.1(a), the facts in the complaint provided sufficient notice of the alleged improper conduct and of this potential violation. The evidence adduced at the DEC hearing clearly confirms respondent's violation of RPC 1.1(a), and the Board therefore considered the complaint to be amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

The second instance, the modification agreement, is far more serious. Respondent not only certified that Gary Friedman had come before him when he had not, but also witnessed a false signature. Respondent contended that he did not know that the signature was being forged but, rather, believed it was signed with a valid power-of-attorney. Clearly, respondent should have reviewed the alleged power-of-attorney before he allowed Irving Friedman to sign his son's name.

Although the Board gave credence to respondent's contentions with regard to both documents, it found nevertheless that he exhibited gross neglect in two instances. Respondent's misconduct was not intentional, but, rather, extremely imprudent.

In determining the appropriate quantum of discipline, the Board noted that this was not simply a single misguided incident, but a series of several improprieties. The Board has weighed this factor against respondent's lack of prior discipline, contrition and acknowledgement of wrongdoing and has unanimously concluded that a reprimand is sufficient discipline. See, e.g., In re Coughlin, 91 N.J. 374 (1982) (public reprimand where the attorney was told by a real estate agent that the grantor had signed a deed in her presence. The attorney tried to get the grantor's verbal acknowledgement of the signature, to no avail. The attorney then completed the acknowledgment on the deed and executed the jurat on the affidavit of consideration); In re Rinaldo, 86 N.J. 640 (1981) (public reprimand imposed where an attorney permitted his secretaries to sign two affidavits and a certification in lieu of

oath, in violation of R.1:4-5 and R.1:4-8); and In re Conti, 75 N.J. 114 (1977) (public reprimand where the attorney's clients told his secretary that it was impossible for them to come to the attorney's office to sign a deed and instructed her to do "whatever had to be done" to record the deed. The attorney had the secretary sign the clients' names on the deed. He then witnessed the signatures and took the acknowledgement).

Three members did not participate.

The Board further required respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 11/20/96

By: Lee M. Hymerling
Chair
Disciplinary Review Board