SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 88-300

IN THE MATTER OF :

STANLEY A. ROSNER :

AN ATTORNEY-AT-LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: June 21, 1989

Decided: October 6, 1989

Nancy D. Gold appeared on behalf of the District IV Ethics Committee.

Respondent waived appearance before the Board.

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

This matter is before the Board based upon a presentment filed by the District IV Ethics Committee. This case results from respondent's representation of Nicholas L. Camerota.

Respondent, a 1976 law school graduate, was admitted to the practice of law in Pennsylvania in 1977. Two years later, he was admitted to the practice of law in New Jersey. He was not employed as an attorney until March 1980, when he obtained a government position as an Attorney Advisor at CECOM in Fort Monmouth, New Jersey. That employment continued until January 1986, when

respondent was granted disability retirement due to what he described as "emotional problems, mostly depression, recurrent depression." Exhibit P-2 in evidence at p. 13. Respondent receives compensation for that disability. As further background, respondent has contended that he suffers both from alcoholism and compulsive gambling.

Respondent was initially hired by Nicholas L. Camerota in early 1986 to research legal issues for him at $10.00 per hour. Within a very short time, Camerota told respondent that he wanted him to act as his attorney of record in several business transactions, including a real estate closing on a large parcel of land in Eatontown, which parcel Camerota intended to purchase for senior citizen housing. Respondent was to be paid $20,000 as Camerota's attorney of record on that closing.

The total purchase price for the Eatontown property was $1,615,000. Under the terms of the contract of sale, upon its execution, Camerota was required to place $75,000 in escrow with his attorney. Camerota was also required to have a mortgage commitment of $1,800,000 to apply for site and design approval within 30 days of execution of the contract, and to begin test borings within 45 days of execution of the contract. Exhibit P-3 in evidence.

Respondent had never handled a real estate closing. He quickly discovered that he was not capable of handling the Eatontown commercial real estate matter, and so advised Camerota prior to the execution of the contract. He further advised

Camerota that he could not hold the $75,000 deposit because he was a compulsive gambler and recovering alcoholic. Additionally, respondent did not maintain either an attorney business account or an attorney trust account. Nonetheless, paragraph 5 of the March 1, 1986 contract of sale provides:

> ... all deposit monies will be held in trust by Stanley Rosner, Esq. and shall be disbursed to pay for construction and building permits, architectural fees, test borings, and other site improvements as billed. At closing, said deposit shall be restored to full $75,000. by buyer and shall be turned over to seller as part of purchase price.

In early March, Camerota purchased legal stationary for respondent. Camerota then prepared a letter to the seller's attorney for respondent's signature. The letter, dated March 19, 1986, acknowledged receipt and escrow of the $75,000 deposit. Bills which totalled $75,000 for alleged site improvements were also listed. Although respondent neither saw nor ever had possession of the $75,000 deposit, and had no knowledge of any site improvements, he signed the letter at Camerota's request. Exhibit P-4 in evidence. In return for this signature, respondent related the following promises from Camerota:

> He said he would still be able to pay me the $20,000. plus he would set me up as a residential manager in the apartments as they were built to sell the apartments to potential buyers and I would get a commission on that so that would be another $20,000. He had told me at one point in time within a year or two I would be making a hundred thousand dollars working for him. [Exhibit P-2 in evidence at 29.]

Shortly thereafter, respondent decided to terminate his employment with Camerota when one or two checks written by Camerota, representing payment of fees for respondent's research, were returned for insufficient funds. Respondent forwarded a handwritten letter to the sellers' attorney, advising that he no longer represented Camerota.

During his representation of Camerota, respondent's letterhead was being used by Camerota for "different litigations, different business transactions." Exhibit P-2 at 34. In fact, respondent signed blank letterheads and gave them to Camerota to draft his own correspondence.

He explained his actions as follows:

> I did that on a couple of occasions. After he had read to me or told me the gist of what he was going to write [sic]. Then I found out it was being used for litigation. He asked me to sign several, on later dates, several letters of substitution and I did just to get out of it because I figured if worse came to worse [sic] I would just have to bring forgery charges against him and I didn't really want to do that. So I just signed substitution agreements to get out of it. [Exhibit P-2 at 39 and 40.]

At one point, acting under what he claimed to be respondent's power of attorney, Camerota signed respondent's name either to correspondence or a legal document placing his initials, N.C., beneath the signature. Exhibit P-2 at 40. Respondent contended that he never authorized Camerota to sign his name, although he testified that

> ... if he has a letter signed by me giving him any power of attorney to sign my name on toilet paper, it's one of those blank sheets I signed that he told me he would do

> something and then he gave himself power of attorney which, you know, would upset me a little bit. If he has anything in writing from me giving him power of attorney I was either drunk or else he forged -- he wrote the stuff in afterwards and I -- it's not what he told me he was going to write in. [Exhibit P-2 at 41.]

The sellers of the Eatontown property thereafter filed suit to rescind the contract with Camerota and Campat Properties, Inc. A motion for summary judgment, filed by sellers, was then granted based on the defendant-purchasers' fraudulent conduct.

In his written opinion, the judge stated:

> It is clear that defendants failed to comply with the essential terms of the contract concerning deposit monies, a mortgage commitment and municipal approvals for the development of the property. In addition, defendants clearly used Mr. Rosner in an attempt to create the appearance that they were acting in accord with the terms of the contract. [Exhibit P-3 in evidence.]

Sellers' attorney subsequently filed this grievance. In proceedings before the District IV Ethics Committee, respondent submitted medical reports dated from 1983 and 1985. The various diagnoses included manic-depressive disorder, generalized anxiety disorder, and schizophrenia. Although treated with a variety of drugs, as of December, 1985, respondent's condition had not stabilized.

The ethics hearing was held on July 25, 1988, nearly three years after this medical report. Despite the passage of time since the medical reports were prepared, respondent did not submit any updated medical reports. Nonetheless, in his answer dated

March 3, 1988, he did contend that he has recovered from "severe depression, compounded by addictions to alcohol and compulsive gambling" that plagued him at the time of his dealings with Camerota.

Despite notice and statements by respondent to the effect that he would be present, he failed to appear at the ethics committee hearing. The Committee proceeded without respondent. It determined that respondent had violated RPC 1.2(d) and (e) RPC 1.6(b), RPC 1.15(d), RPC 4.1 and RPC 8.4, as well as R. 1:21-6(a)(1), and filed a presentment.

CONCLUSION AND RECOMMENDATION

Upon a review of the full record, the Board is satisfied that the conclusions of the committee in finding respondent guilty of unethical conduct are fully supported by clear and convincing evidence.

Respondent's actions in this matter were outrageous. Respondent completely abrogated his responsibilities as an attorney when he signed blank letterheads for his client's personal use. While respondent claims that his client had told him what the letters would contain, this cannot in any way absolve him of his improper conduct, given the tremendous potential for harm, not only to respondent, but to other attorneys, members of the public, and the justice system itself. In allowing Camerota the freedom to use respondent's signature at will, in essence selling his license to practice law, respondent permitted Camerota to engage in the

unauthorized practice of law, and to perpetrate a fraud on an unknown number of unsuspecting individuals.

Respondent again sold his license when he signed the March 19, 1986 letter drafted by Camerota, even though he knew the contents of that letter were false. His signature was given in return for Camerota's promise of a $20,000 fee plus greater financial rewards at a future date. The Board gives no weight to respondent's claim, in his letter of October 25, 1987, to the Committee investigator, that he acted out of fear of Camerota. While the argument may be convenient, the facts do not support respondent's claim. Only six months prior to that letter, in sworn testimony taken at a deposition, respondent testified that Camerota was like a father to him. Exhibit P-2 at 35. Nowhere in that transcript does respondent suggest that his actions were taken out of fear for Camerota. To the contrary, the respondent's motivation -- financial gain -- is clearly demonstrated in the record. His actions resulted in a direct fraud to the detriment of another party, and reveal a complete lack of integrity.

"...(A) lawyer has the independent duty to act with both total honesty and to avoid participating in any fraud or misrepresentation." In re Labendz, 95 N.J. 273 (1984). In signing both the fraudulent March 19 letter and the blank letterhead, respondent violated that duty and was guilty of serious unethical conduct. He assisted his client in fraudulent conduct, contrary to RPC 1.2(d) and (e). He failed to reveal that fraudulent conduct to either opposing counsel or the proper authorities as required

by RPC 1.6(b)(1) and RPC 4.1. His conduct also violated RPC 8.4(c) in that it involved both fraud and deceit. Moreover, respondent's failure to maintain a trust account and business account violated both R. 1:21-6 and RPC 1.15(d).

Neither the Court nor this Board have previously reviewed a case identical to the case at hand. The Board has, however, been guided by case law in analogous situations. In In re Blatt, 65 N.J. 539 (1974), a two-year suspension resulted from, inter alia, an attorney's actions in behalf of a client who was under federal investigation for his alleged involvement in municipal corruption. The attorney arranged for the substitution of an altered invoice for the original invoice, and also urged two individuals, who were potential witnesses, to cooperate. In a separate matter, at the direction of his broker-clients and unbeknownst to the sellers, the attorney prepared two contracts of sale that were designed for the interposition of a strawman and contained a $25,000 disparity as to the purchase price. The Court made clear that:

> A lawyer may not follow the directions of a client without first satisfying himself that the latter is seeking a legitimate and proper goal and intends to employ legal means to obtain it. It is no excuse for an attorney to say that he only did what he did because directed to do so by his client. The propriety of any proposed course of action must be initially considered by the attorney, and it may be thereafter pursued only if the lawyer is completely satisfied that it involves no ethical compromise. It is for the lawyer, not the client, to make this decision. Id. at 545.

A two-year suspension was also imposed where an attorney forged the signature of the local sheriff to a deed of foreclosure and witnessed the instrument, all in order to conceal from his clients his failure to act on the matter. In re McNally, 81 N.J. 304 (1979). Numerous mitigating circumstances were considered by the Court in suspending the attorney for only two years.

In a similar case, a three-year suspension resulted when an attorney, who had repeatedly misrepresented the status of an adoption proceeding, prepared two false court orders to cover his own failure to pursue the matter. In re Yacavino, 100 N.J. 50 (1985). The Court noted that the attorney was saved from disbarment by the fact that the papers in question were not official documents. However, the Court stated: "(e)ven absent criminal intent, when an attorney perpetrates a fraud upon the court, that conduct poisons the stream of justice and can warrant disbarment." Id. at 54, citing In re Stein, 1 N.J. 228 (1949).

Moreover, in cases of this nature, disbarment has been ordered even where no criminal conviction results. See In re Pennica, 36 N.J. 401 (1962) (where attorney was disbarred for complicity in fraudulent bank loan transaction, as well as deliberate misrepresentations to a judge and overreaching a client); In re Stein, 1 N.J. 228 (1949) (where attorney was disbarred for knowingly participating in and presenting a fraudulent divorce action to the Court).

In all disciplinary matters, the quantum of discipline must accord with the seriousness of the misconduct in light of all

circumstances. In re Nigohosian, 88 N.J. 308, 315 (1982). Aggravating and mitigating factors are therefore relevant as part of the circumstances of the violation. In re Hughes, 90 N.J. 32, 36 (1982).

The Board has considered respondent's offer of his alleged psychiatric problems together with his claimed alcoholism and compulsive gambling. While all three of these problems might normally be considered as mitigating factors, since 1985 there is a total absence of any reports on any of these alleged conditions. Respondent's claim of mitigation in this regard, is therefore, unreliable and not supported by the record. On the other hand, the Board has given considerable weight to the fact that respondent was motivated purely by self-interest and promises of future riches, rather than the best interests of the client. The Board considers this to be an aggravating circumstance.

In the case now before this Board, respondent showed an utter disregard of his oath as an attorney. In re Stein, supra at 237. In gauging respondent's offense, the Board noted that he did not engage in a lengthy course of unethical conduct. Rather, respondent's actions were limited to dealings with one client over a short period of time. This case is, therefore, distinct from In re Pennica, supra. Moreover, while respondent's fraudulent conduct was motivated by profit, it is distinguishable from In re Stein, supra, by the fact that the fraudulent conduct did not involve public documents or occur before a court of law.

Nonetheless, respondent's serious misconduct requires a lengthy suspension from the practice of law. The Board, therefore, unanimously recommends that respondent be suspended from the practice of law for three years. In addition, the Board recommends that respondent be required to produce medical and psychiatric proof of his fitness to practice law prior to reinstatement. As a further condition to reinstatement, the Board recommends that respondent be required to complete the Skills and Methods core courses given by the Institute for Continuing Legal Education. Upon reinstatement, if respondent decides to engage again in the private practice of law, the Board recommends that he practice under the supervision of a proctor, approved by the Office of Attorney Ethics, for a period of one year.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for appropriate administrative costs.

Dated: October 6, 1989

Raymond R. Trombadore
Chair
Disciplinary Review Board