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October 23, 2013

Mark Neary, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: In the Matter of George J. Botcheos, Jr.
Docket No. DRB 13-140
District Docket No. IV-2012-0025E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board deems warranted) filed by the District IV Ethics Committee in the above matter, pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion. In the Board's view, a reprimand is the appropriate measure of discipline for respondent's violation of RPC 1.8(a).

Essentially, respondent engaged in two business transactions with longtime client Ronald H. Biglin, Jr., without advising him, in writing, of the desirability of seeking the advice of independent counsel. Respondent also failed to obtain Biglin's written consent to the transactions. The parties stipulated that the terms of both transactions were fair and reasonable to Biglin.

Specifically, in 1995, Biglin, a builder, constructed a house for respondent in Medford, providing respondent with a \$425,000 loan, secured by a mortgage and note, both of which were drafted by respondent. Respondent failed thereafter to record the mortgage.

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When, in 2008, respondent sold the house for \$800,000, he repaid the loan in full.

In July 2004, respondent and his wife sought to purchase a house in Florida. Biglin financed their Florida purchase, lending them a total of \$750,000 by the July 2006 settlement date. Respondent drafted the mortgage and loan documents for this transaction and, again, failed to advise Biglin of the desirability of obtaining independent counsel and to obtain Biglin's written consent to the essential terms of, and respondent's role in, the transaction, as required by RPC 1.8(a).

As in the Medford transaction, respondent failed to record the Florida mortgage. At an undisclosed time, Biglin discovered that failure and recorded it himself.

In late 2010, respondent fell behind on the mortgage payments. In October 2011, Biglin initiated foreclosure proceedings. Respondent did not contest the foreclosure, although his wife claimed that respondent and his secretary had forged her signature on the mortgage note. Her claim was found baseless. Ultimately, Biglin gained title to the property.

When an attorney enters into a loan transaction with a client without observing the safeguards of RPC 1.8(a), the ordinary measure of discipline is an admonition. See, e.g., In the Matter of George W. Johnson, DRB 12-012 (March 22, 2012) (as trustee of a testamentary trust, attorney made a loan from the trust to himself without seeking court approval, as required by law; extensive mitigation considered, including the attorney's forty-four-year untarnished record); In the Matter of Damon Anthony Vespi, DRB 12-214 (October 2, 2012) (without complying with the requirements of RPC 1.8(a), attorney obtained a security interest in property that was the subject of the representation by having the client sign a promissory note to guarantee the payment of his \$30,000 fee; to secure the note, the attorney obtained an assignment of interests in payment under certain contracts and a personal guaranty for the benefit of his law firm); and In the Matter of Frank J. Shamy, DRB 07-346 (April 15, 2008) (attorney made small, interest-free loan to three clients, without advising them to obtain separate counsel; the attorney also completed an improper jurat; significant mitigation considered).

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Here, not once, but twice, respondent borrowed funds from Biglin to purchase real estate, securing those loans with mortgages and then failing to record them. Although Biglin suffered no apparent harm in connection with the Medford mortgage, he was exposed to a great risk of loss because the security for his substantial loans of \$1,175,000 was left unperfected (in the first instance, for sixteen years). While the Medford mortgage was paid in full upon the sale of the house, respondent defaulted on the Florida mortgage note, causing that property to go into foreclosure. Although Biglin now has title to the property, he did not get the benefit of his bargain, that is, the repayment of his loan. In light of these facts, the Board determined that a reprimand, a form of discipline agreed to by respondent, is the appropriate sanction in this matter.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated April 22, 2013.
2. Stipulation of discipline by consent, dated April 12, 2013.
3. Affidavit of consent, dated April 18, 2013.
4. Ethics history, dated October 23, 2013.

Very truly yours,



Isabel Frank
Acting Chief Counsel

IF/paa
encls.

cc: Bonnie C. Frost, Chair, Disciplinary Review Board
(w/o encls.)
Charles Centinaro, Director, Office of Attorney Ethics
(w/o encls.)
Dawn E. Briddell, Chair, District IV Ethics Committee
(w/o encls.)
George J. Botcheos, Jr., Respondent (w/o encls.)