SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-024

IN THE MATTER OF

MERCEDES DE LA REZA

AN ATTORNEY AT LAW

Decision

Argued: March 18, 1999

Decided: June 9, 1999

Ellen W. Smith appeared on behalf of the District IIB Ethics Committee.

Michael Gross appeared on behalf of respondent.

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 violations of *RPC* 1.7 (conflict of interest) and *RPC* 1.4(b) (failure to explain a matter so as to permit a client to make informed decisions) (count I); *RPC* 1.1 (presumably (a), gross neglect), *RPC* 1.4(b) and *RPC* 1.7 (count II); *RPC* 1.4(a) (failure to communicate with

client), *RPC* 1.7, *RPC* 1.15 (failure to safeguard escrow funds) and *RPC* 8.4 (presumably (c), conduct involving dishonesty, fraud, deceit or misrepresentation) (count III); *RPC* 4.1(a)(1) (false statement of fact to a third person) and *RPC* 8.4(c) (count IV); and *RPC* 1.7 and *RPC* 1.1(a) (count V).

Respondent was admitted to the New Jersey bar in 1979. She has no prior disciplinary history.

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Respondent represented both the buyer and the seller in a real estate transaction that never closed. In February 1996 the grievant, Ambioris Taveras, agreed to buy property in North Bergen, New Jersey from Mercedes Suarez, a friend of Taveras' mother, Carmen. Respondent had represented Suarez in prior matters. Because no realtor was involved in the transaction, the parties negotiated the terms of the contract on their own. Respondent, who had no involvement in the negotiation phase of the deal, later prepared the contract. Taveras received assistance from Ricardo Zamora, a loan officer and mortgage consultant, who advised him about the steps necessary to apply for a mortgage. Zamora was in constant communication with Taveras, accompanying him to almost every meeting.

Testifying through an interpreter, Taveras stated that on March 11, 1996 he, Zamora, Suarez and respondent met at respondent's office, where he signed a real estate contract.

Taveras contended that respondent never advised him to retain a separate attorney or explained to him the problems that could arise if respondent represented both him and Suarez in the real estate transaction.

Respondent stated that Suarez asked her to prepare a real estate contract, which Suarez later picked up from her office.[1] Respondent contended that, several weeks later, Suarez and Taveras appeared at her office, requesting changes to the contract that were required by Taveras' lender. The record is silent as to whether respondent negotiated the changes to the contract. Respondent insisted that she had advised Taveras to retain a separate attorney and had explained to him that a conflict of interest could occur in the future, if problems developed. Suarez, also testifying through an interpreter, confirmed that respondent had told Taveras to retain an attorney and had given him "copies of laws" about conflict of interest. According to Suarez, however, because Suarez and Taveras were old friends, respondent had agreed to represent both of them. Suarez added that she and Taveras' mother had been friends for five years. Suarez also noted that she was anxious to sell the property because it was in foreclosure.

Zamora, in turn, testified that, although respondent had explained to Taveras that she could not represent both buyer and seller, Taveras had insisted that she do so. It is not clear if respondent agreed to represent Taveras at that time. Zamora added that the first meeting was like a "family meeting," not a business meeting.

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[1] Although respondent was cross-examined at the ethics hearing, she declined to present direct testimony, relying on her May 29, 1997 letter to the DEC as her statement.

At the ethics hearing, three contracts were introduced into evidence. In the first contract, the purchase price was $128,000, the required deposit was $12,800, the mortgage amount was $115,200 and Suarez agreed to pay points of up to $3,000. After Taveras' first mortgage application was denied, the parties executed a second contract with a purchase price of $145,000, a deposit of $14,500, a mortgage amount of $123,250 and a provision for Suarez to pay the closing costs. According to respondent, the parties had agreed that, because the property had been appraised at more than the initial $128,000 purchase price, Taveras would borrow more money and Suarez would use the additional sale proceeds to pay the closing costs. Finally, the third contract was identical to the second, except in the following respects: Suarez agreed to take back a $7,250 mortgage, Taveras was given until June 15, 1996 to obtain a mortgage commitment and Suarez agreed to pay up to $7,000 in closing costs. Again, there is nothing in the record indicating that respondent participated in these negotiations.

The first two contracts provided that "[a]ll deposit moneys [would] be held in trust by Mercedes de la Reza, Esq. Attorney for Seller in a non interest bearing trust account until closing." However, the third contract stated that "[a]ll deposit moneys [would] be held in trust by Mercedes de la Reza, Esq. until closing." The third contract, thus, omitted any reference to respondent's role as the seller's attorney.

On March 26, 1996 Taveras gave respondent four checks totaling $12,800, ten percent of the purchase price of $128,000, as provided in the first contract. Respondent was

to retain the deposit in her trust account until the real estate closing. Taveras had acquired these funds by obtaining cash advances on credit cards. After one of the deposit checks for $3,400 had been returned by the bank, Taveras' deposit with respondent stood at only $9,400. Taveras neither replaced the $3,400 nor increased the deposit to $14,500, as required by the subsequent contract for a $145,000 price. Taveras, thus, never fully paid the deposit, as required by the new contract.

According to respondent, when Taveras brought the deposit to her office, he informed her that he had not retained another attorney, but wanted respondent to represent him also. After confirming by telephone that Suarez had agreed to the dual representation, respondent advised Taveras about various issues, such as home inspections, and gave him an estimate of closing costs. Indeed, Zamora confirmed that respondent had spent approximately three hours explaining matters to Taveras and had given him a draft of a RESPA statement detailing the estimated closing costs (Exhibit P-7). Respondent confirmed that, at this point, she agreed to represent both Suarez and Taveras.

In addition to the deposit monies, Taveras obtained another $1,600 by credit card advances. Taveras claimed that he loaned this money to Suarez, with respondent's knowledge. There is no indication that Taveras asked for respondent's advice in this regard. Taveras also authorized respondent to advance to Suarez $1,000 from the real estate deposit. Taveras, thus, asserted that he had loaned Suarez a total of $2,600. Taveras denied that respondent had cautioned him not to advance money to Suarez from the deposit, that she had

advised him to have a written agreement spelling out the terms for the repayment of the loan and that she had explained to him the problems that could develop if the real estate transaction did not close. Taveras maintained that, had respondent explained the potential for problems, he would not have made the loan. Taveras denied authorizing any advances to Suarez from the deposit monies, other than the $1,000.

For her part, respondent stated that, on April 2, 1996, she learned from Suarez that Taveras had agreed to loan her $2,600 from the deposit money. Respondent asserted that she had tried to dissuade both Suarez and Taveras from entering into this loan transaction. According to respondent, however, Taveras orally authorized the loan, indicating that, due to an unspecified emergency, Suarez needed the money immediately. Respondent maintained that Taveras had agreed to send her written approval for the loan, but never did so.

Respondent further contended that, sometime later, in mid-May, another client, Johnny Rodriguez, had informed her that Suarez owed Rodriguez $6,000 that he needed for a real estate purchase scheduled for May 22, 1996. Respondent claimed that Suarez, unable to obtain the funds needed to pay Rodriguez, had told her that Taveras had agreed to advance Suarez another $6,000 from the deposit. Respondent added that, by the time Taveras contacted respondent to approve the advance, she had learned that Rodriguez needed only $5,200 to close on the property that he was buying. According to respondent, Taveras had orally authorized her to advance to Suarez $5,200 from the deposit, which she

did. Again, respondent stated that Taveras had failed to send her written authorization for the loan, as she had requested and he had promised.

Suarez, too, testified that Taveras had authorized respondent to advance her first $1,600 and later $5,200 from the deposit. According to Suarez, when she advised respondent that Taveras had agreed to the loan, respondent insisted on speaking directly to Taveras to confirm his approval. Suarez testified that, although respondent had advised her and Taveras to sign a document containing the terms of the loan, they never did so. Suarez added that respondent had become angry on learning of the $5,200 loan, protesting that Suarez was using too much of the deposit funds.

At the ethics hearing, Zamora confirmed that Taveras had authorized all advances from the deposit monies, adding that, in the Dominican community, people usually rely on oral, not written, agreements.

Because Taveras had been notified by his existing landlord of a rent increase, he moved into Suarez' property in April 1996, along with his wife, child, mother and three sisters. According to Taveras, respondent advised him that, so long as he had Suarez' consent, he could move in before the closing. Taveras claimed that he had helped Suarez move out of the property and that she had permitted him to occupy the property rent-free. In turn, respondent claimed that Suarez had informed her, one month after the fact, that Taveras and his family had moved into the property. According to respondent, she learned from Suarez that, although the monthly rental would be $1,100, Suarez had waived any rent

obligation for April. Respondent contended that Taveras had told her that the amount of rent would be settled at the closing.

Although Suarez' testimony on this point is unclear, it appears that Suarez did not know in advance that Taveras and his family had moved into her property. Apparently, Suarez agreed to the move after it had occurred. According to Suarez, although respondent advised her to enter into a written rental agreement with Taveras, Suarez neglected to do so because she was careless and trusted people.

In June 1996 the mortgage broker, Consortium Financial, requested a letter from respondent's office confirming that respondent had the escrow deposit in her trust account. Mary Zuehlke, then respondent's secretary, testified that she opened the mail, noted the request from Consortium Financial, examined the file and prepared a letter indicating that respondent had $14,500 in escrow for Taveras. Zuehlke claimed that she gave respondent a stack of letters to sign, including the letter about the escrow. Zuehlke alleged that, after she "faxed" the letter to Ralph Mejia, owner of Consortium Financial, respondent, who had been in a meeting, directed her not to send the letter to Mejia. According to Zuehlke, when she advised respondent that she had already "faxed" the letter, respondent became very upset, immediately telephoned Mejia and explained to him that the letter had been sent in error and that she did not have $14,500 in escrow for Taveras.

Both Mejia and respondent confirmed Zuehlke's version of the events. Respondent testified that she did not correct the mistake in writing because she had immediately

contacted Mejia by telephone. Respondent acknowledged that the better practice would have been to send a confirming letter. Mejia, however, added that, even if respondent had not telephoned him to explain the mistake about the escrow funds, the lender would have required proof of the deposit, such as a copy of the front and back of the deposit check.

Taveras alleged that, in January 1997, he learned that his mortgage application had been denied. However, according to respondent, Taveras was unable to obtain the additional funds needed for the closing. Taveras' mother, Carmen, had gone to the Dominican Republic to collect $16,000 from their coffee crop. Carmen had returned without the money that Taveras planned to use for the closing. In addition, according to the record, Carmen stated that she had had a dream that the former owner of the property, who was deceased, had appeared at her bedside, advising her not to buy the house. Believing the house to be haunted, Carmen refused to proceed with the transaction. Taveras, thus, was unable to fulfill the requirements of the real estate contract.

Up until this point, respondent had not committed any impropriety. It was only after it became clear that the transaction would not go through that questions about respondent's actions arose. Indeed, by then Taveras and Suarez's cordial relationship had turned sour.

When it became obvious that the closing would not occur, Taveras demanded the return of his deposit. Suarez insisted that Taveras pay rent for the property he had occupied since April 1996. On January 17, 1997 Taveras, Suarez, Zamora and respondent met at respondent's office to resolve the financial dispute over the termination of the real estate transaction. Taveras stated that, because he did not understand the issues, he brought a

friend, Ricardo Maldonado, to the meeting. Taveras contended that respondent did not advise him to retain his own attorney. He further claimed a belief that respondent represented both him and Suarez at the meeting. Taveras testified that, although he believed he was entitled to the return of his $9,400 deposit, he signed two agreements (Exhibits P-5 and P-6) providing for refunds of lesser amounts. Taveras claimed that he signed the documents, although he did not agree with their terms, because he was told that he would receive money back within fourteen days. Both documents are written in Spanish. Taveras asserted that Exhibit P-6 was signed first and then modified to Exhibit P-5. Pursuant to Exhibit P-6, Suarez agreed to pay Taveras $3,620.66, calculated as follows:

4/3/96 Taveras to Suarez Loan	$2,600.00
Interest on loan at 16%[2]	346.66
5/22/97 Taveras to Suarez Loan	5,200.00
Interest on loan	623.99
Taveras to Suarez cash given directly	1,600.00
Total	10,370.66
Less rent - $750/month for nine months	(6,750.00)
Amount due Taveras from Suarez	$3,620.66

This agreement was then modified to provide for a refund of $4,746. (Exhibit P-5).

Taveras stated that, although he had signed both agreements, Suarez had told him after the meeting that she would accept any amount that he was willing to pay for rent. According to Taveras, he told Suarez that he was willing to pay only $4,000 in rent. He

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[2] This is the interest rate that Taveras was charged for the credit card advances through which he obtained the deposit funds.

understood that respondent had paid costs of $800 for the property appraisal and title insurance. Taveras, thus, maintained that he had expected to receive $6,200.[3] Yet, inexplicably, Taveras also testified that he had expected to receive less than the $3,620.66 contemplated by Exhibit P-6.

Taveras stated that he never received any money from respondent or Suarez. He reiterated that he never authorized any loan to Suarez, except for $1,000 (in addition to the $1,600 he had given her directly), adding that it was only at the January 17, 1997 meeting that he discovered that the other loans had been made.

For her part, respondent testified that Taveras had received a mortgage approval, contingent on several conditions, including payment of the required deposit. However, by that time, Carmen had informed Suarez about her dream and Suarez had agreed to cancel the contract, as long as she was permitted to sell the property before refunding the deposit. Zamora, too, testified that, by the time Taveras had received an oral commitment from a mortgage company, he had lost interest in buying the property. Respondent asserted that she had advised Suarez that Taveras had breached the contract and that she was entitled to retain the entire ten percent deposit. Respondent alleged that Suarez was willing to simply cancel the contract because she considered Carmen a friend and because she was superstitious and believed that Carmen's dream indicated that Taveras should not buy the property.

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[3] $11,000 ($9,400 deposit plus $1,600 cash loan) minus $4,800 ($4,000 for rent and $800 for respondent's costs).

Respondent contended that, at the January 17, 1997 meeting, she had advised Taveras and Suarez that she did not represent either of them and that she was trying to arrive at a resolution that was fair to both parties. Despite this conflict, respondent did not withdraw from the representation of both Suarez and Taveras. She conceded that, at that time, Taveras' and Suarez' interests were in conflict. Respondent claimed that it never occurred to her to send Taveras and Suarez a letter explaining that the ethics rules prohibited her from representing parties with conflicting interests.

Respondent declared that, at the January 17, 1997 meeting, Taveras never denied authorizing the loans to Suarez and, in fact, admitted that he had authorized both loans and had failed to confirm them in writing. Respondent revealed that at first Taveras took the position that he should not be required to pay any rent to Suarez because he had not signed a lease and was required to pay interest on the credit card cash advance for the deposit. She indicated that Taveras finally conceded that rentals do occur without a written lease and that Suarez eventually agreed to refund to Taveras the interest payments he had made on the deposit. Respondent explained that, although the parties had first agreed that Suarez would refund $3,620.66 to Taveras, Suarez had agreed to forbear an additional rent for a one and one-half month period ($1,125), thereby increasing the refund to Taveras to $4,753.66 ($3,620.66 plus $1,125). Respondent asserted that, at the end of the meeting, all parties had expressed approval of the agreement, although Taveras was still trying to convince Suarez to further reduce the payment of the rent to six months.

The agreement was never fulfilled, however. Shortly after signing the agreement, Maldonado, acting in Taveras' behalf, notified respondent that Taveras did not understand the agreement, did not owe rent and wanted a full refund of the deposit. Respondent scheduled another meeting for January 29, 1997, attended by Taveras, Suarez, Maldonado and respondent. According to respondent, Taveras announced that (1) he was not obligated to make payment, (2) his entire deposit, which he now claimed to be $14,500 plus the money he had spent on appraisals, application fees and redecorating the property, should be returned to him, (3) respondent had no proof that he had authorized the loans and (4) he would neither pay rent nor move out until he was refunded every penny he had paid. According to respondent, Suarez' response was that she would try to obtain the money she had borrowed from Taveras and submit the issue for the courts' resolution. Respondent claimed that she then terminated the meeting.

Taveras did not move out of the property until October or November 1997, approximately one and one-half years after he had moved in. Although Taveras never paid Suarez rent, he allegedly paid the bank $2,000 during the ensuing foreclosure proceedings. Suarez' mortgage was the subject of a foreclosure and her interest in the property reverted to the lender.

In the grievance, Taveras alleged that he had given respondent $14,500 as a real estate deposit to be held in escrow, that respondent had agreed to return the full deposit of $14,500, but had not done so, and that she had released to the seller $10,000 of his escrow

money without his authorization. When questioned about these obviously false allegations, Taveras asserted that, because he does not read or write in the English language, his friend, Maldonado, had prepared the grievance for him. Although Taveras admitted that he had signed the grievance, he denied claiming that he had given respondent $14,500.

At the ethics hearing, the presenter appeared to concede that there was no clear and convincing evidence of misrepresentation of the escrow amount to the mortgage broker, as alleged in count IV of the complaint. In addition, although the presenter did not directly do so, she seemed to admit that the failure to communicate charge had also not been proven. The presenter agreed that Taveras' testimony that he believed he could reside in Suarez' property without any rental obligation was not credible, finding that both Taveras and Suarez were not reliable witnesses. The presenter stated that, although respondent's actions in disbursing escrow funds could be considered misappropriation or failure to safeguard funds, respondent had not acted for her own financial enrichment. The presenter recommended a suspension for "some time period."

In turn, respondent's counsel conceded that respondent had committed ethics violations and apparently does not appreciate the wrongful nature of her conduct. He argued, in mitigation, that respondent (1) had been practicing law for almost twenty years, (2) provides services to members of the community in Bergen County who would not otherwise be represented by an attorney and (3) not only had not benefitted from her misconduct, but had never received a fee for her services in this matter. In addition, it was pointed out that respondent is sixty-seven years old, having become an attorney after a career as an

interpreter for the courts. Respondent's counsel recommended a reprimand and "possibly supervision."

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The DEC found that respondent violated *RPC* 1.7 in the following respects: she (1) failed to obtain written consent for dual representation, (2) failed to inform the parties that she could not serve their dual interests and (3) failed to terminate her representation when she learned that Taveras had moved into the property, that Suarez had requested an advance from the deposit and that the parties had conflicting interests upon the cancellation of the real estate transaction. The DEC also found respondent guilty of a violation of *RPC* 1.1(a), when she released escrow monies without written authorization, failed to document her telephone conversation with Mejia and failed to disqualify herself from representation both at the inception of the transaction and after she learned that a dispute had developed. The DEC observed that, although respondent's attempt to reach a fair resolution of the dispute between both of her clients was noble and well-intentioned, she served neither party well because they might have had other rights and remedies beyond the agreement that respondent had negotiated. The DEC, thus, determined that respondent engaged in gross neglect by failing to advise Taveras and Suarez to retain other counsel.

The DEC recommended the dismissal of the following charged violations:

- *RPC* 1.4(a) and (b) – the DEC found that respondent did not fail to communicate with her clients or to fully explain matters to them, but simply failed to document these communications.

- *RPC* 1.15 – the DEC found that respondent did not misappropriate or fail to safeguard funds, determining that Taveras had authorized the disbursement of escrow monies to Suarez.

- *RPC* 8.4 – the DEC found that respondent had not committed any fraudulent conduct when she transferred Taveras' deposit to Suarez and to Rodriguez in Suarez' behalf, reiterating that Taveras had authorized those advances.

- *RPC* 4.1(a)(1) and *RPC* 8.4(c) – the DEC found that respondent did not knowingly make a false statement of fact or misrepresentation when her secretary "faxed" the escrow letter to Mejia, reasoning that respondent had immediately notified Mejia of the error and that Mejia had testified that he had not been misled by the fax transmission.

With respect to the factual disputes, the DEC found as follows:

- At the inception, respondent had advised Taveras and Suarez that they should have separate counsel and agreed to the dual representation because of the relationship of the parties as friends.

- Taveras moved into Suarez' property without respondent's knowledge or approval.

- Taveras breached the contract by failing to deposit the required funds and failing to complete the mortgage application process.

- Suarez had not agreed that Taveras could move into the property without any obligation to pay rent. The parties agreed that the rental obligation would be settled at the closing of title.

- Taveras consented to all of the advances of the deposit to Suarez.

- Taveras and his family benefitted from the circumstances because, if they had not moved into Suarez' property, they would have paid much more rent at their prior apartment.

- Taveras may have attempted to extort money from respondent by demanding the return of $14,500, clearly more than he had deposited, and threatening to file an ethics grievance.

- Respondent explained to Taveras the costs and fees entailed in the real estate transaction, giving him a draft RESPA statement.

- Taveras abandoned the transaction because his mother had a bad dream and had not obtained the money needed to complete the transaction.

In summary, the DEC resolved the factual disputes in respondent's favor, finding Taveras not credible.

The DEC recommended that respondent be reprimanded for her dual representation of Suarez and Taveras and for (1) not obtaining Taveras' written consent to the release of the deposit and (2) not memorializing her phone conversation with Mejia. The DEC also recommended that respondent be required to practice law under a "mentor" for an unspecified period of time. Lastly, the DEC recommended that respondent disburse to Suarez the $650 remaining in her trust account from this transaction because Suarez had suffered the most damage, having lost her home to foreclosure due to Taveras' refusal to move out of the property.

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Following a *de novo* review, the Board is satisfied that the DEC's conclusion that respondent's conduct was unethical was fully supported by clear and convincing evidence.

It is unquestionable that respondent breached *RPC* 1.7(b). She engaged in an impermissible conflict of interest situation from which she should have withdrawn. Respondent had a long-standing relationship with Suarez, the seller of the property. Although Taveras claimed that both he and his mother, Carmen, met Suarez during this transaction, the overwhelming testimony from all other parties supports the conclusion that Suarez had a friendship with Carmen. The record demonstrates that the buyer, seller and respondent were all members of their Spanish-speaking community and that it is characteristic of the Dominican culture to rely on oral, not written, agreements. After the buyer and seller negotiated the terms of the transaction, Suarez asked respondent to prepare the real estate contract. When Taveras and Suarez informed respondent that she expected her to represent both of them, respondent appropriately advised them to retain separate counsel. They refused. Later, respondent reluctantly agreed to represent both of them, due in part to the friendly relationship between buyer and seller. This dual representation is reflected in the revision to the third contract, which omits reference to respondent as only the seller's attorney. Respondent explained to Taveras and Suarez the conflict of interest and the potential problems that could arise from the dual representation. As detailed below,

respondent had not yet violated *RPC* 1.7 because she disclosed the potential conflict of interest to both parties, who nonetheless consented to the dual representation. It was only when the parties' interests actually became adverse that respondent violated *RPC* 1.7.

Although the DEC found that the mere representation of both buyer and seller in a real estate transaction violates *RPC* 1.7, there is significant support for the opposite conclusion. *Opinion* No. 243 of the Advisory Committee on Professional Ethics, 95 *N.J.L.J.* 1145 (1972) allows the representation of both buyer and seller after the execution of the real estate contract. Its prohibition is clearly limited to pre-contractual services:

> We do conclude, however, that one attorney should not represent both parties in connection with the preparation and execution of a contract of sale. Generally, it is at this stage of negotiations for the sale of property that a buyer and a seller have their greatest difficulties. Their interests are in conflict if for no other reason than the buyer wishes to obtain the property as cheaply as possible and the seller wishes to get the highest price. At this juncture, also, there can and frequently do arise disputes concerning fixtures to be left in the premises, assumption of mortgages, mortgage contingencies, and other matters in which there can be serious disagreements, in all of which the interest of the buyer and seller will be diametrically opposed.
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> [T]he representation of a buyer and a seller in connection with the preparation and execution of a contract is so fraught with obvious situations where a conflict may arise that one attorney shall not undertake to represent both parties in such a situation.
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> [*Id.* at 1150]

The Board recently had occasion to interpret the above *Opinion* in *In re Butler*, 142 *N.J.* 460 (1995). There, the attorney represented not only the buyer and seller of property

during the negotiation stage, he also represented a third party who had clandestinely agreed to buy the property from the original buyer after the completion of the first transaction. The attorney also concealed from the original seller the existence of the subsequent contract between the buyer and the third party. Finding that the attorney violated *Opinion* No. 243 and *RPC* 1.7, as well as *RPC* 1.4(a) and (b) and *RPC* 8.4(c), the Board voted to suspend the attorney for three months. The Court agreed. Similarly, in *In re Lanza*, 65 *N.J.* 347 (1974), the Court underscored the dangers in representing both buyer and seller in a real estate transaction. In that case, after the attorney was retained by the seller, he agreed to represent the buyer, without first advising the seller of the dual representation and without explaining to both parties the potential conflicts of interest that could develop. Later, when a dispute arose, the attorney did not withdraw from representation. Although Justice Pashman, concurring in the result, urged that dual representation of buyers and sellers should be totally forbidden, the Court determined that, so long as the attorney advises both parties of the facts and areas of potential conflict, an attorney may represent both buyer and seller. The Court, however, cautioned attorneys that they must withdraw when a conflict arises.

Here, respondent, Suarez and Zamora testified that respondent advised both buyer and seller that they should retain separate counsel and explained to them the potential conflicts. Thus, respondent's initial representation of Suarez and Taveras did not violate *RPC* 1.7. Moreover, that *RPC* does not require that either the attorney's disclosure or the

clients' consent be in writing. It simply requires disclosure and consent. Respondent's failure to provide written disclosure or obtain written consent regarding the dual representation was not violative of the conflict of interest rule.

There is no doubt, however, that, once a dispute between the parties developed, respondent should have withdrawn from the representation of both parties. After the parties determined to terminate the real estate contract, Taveras wanted the return of his deposit, while Suarez was interested in being paid rent for Taveras' occupancy of the property. Their interests were clearly adverse. Although at the January 17, 1997 meeting respondent tried to negotiate a fair compromise, her attempt was ill-advised. Instead of seeking an agreement between the parties, respondent should have explained to them that she would no longer represent either of them and that they should retain separate counsel. Her failure to do so violated *RPC* 1.7.

The DEC also found that, once Suarez requested an advance from the deposit and once Taveras moved into the property, respondent's failure to withdraw was improper. The Board agrees. Although respondent tried to dissuade both Taveras and Suarez from engaging in a loan transaction regarding the deposit monies, both disregarded her advice. At this point, respondent was in a precarious position. While representing both buyer and seller in a real estate transaction and while acting as escrow agent, respondent learned that the buyer agreed to loan the seller money from the buyer's real estate deposit and that the seller agreed

(after the fact) to allow the buyer to occupy the property before the closing. This situation was so fraught with conflict that respondent should have withdrawn from the representation at that time.

In addition to the conflict of interest violation, respondent engaged in improvident practices. Although the DEC was correct in finding that Taveras consented to Suarez' use of the deposit, respondent should have documented these advances and should have memorialized her telephone conversation with Mejia, in which she corrected her earlier "fax" to him. The DEC found that the above conduct, when added to the conflict of interest, constituted gross neglect, in violation of *RPC* 1.1(a). The Board is unable to agree. As mentioned above, the disclosure of and consent to the dual representation need not be in writing. Moreover, respondent's failure to send a letter to the mortgage company correcting the contents of the "faxed" letter caused no damage, as Mejia testified that he was not misled by the letter. Finally, although respondent's failure to withdraw from representation once a dispute arose violated *RPC* 1.7, it did not constitute gross neglect. Thus, the Board dismissed the charged violation of *RPC* 1.1(a).

The DEC properly dismissed the other charged violations. Respondent, Suarez and Zamora testified that respondent had given detailed explanations about the real estate transaction, the anticipated closing costs, the mortgage process, the dual representation and so forth. There was no evidence, much less to a clear and convincing degree, that respondent

neglected to return telephone calls or keep her clients informed. Nothing in the record supports the charge that respondent failed to communicate with her clients or failed to explain a matter to them to the extent reasonably necessary for them to make an informed decision. Thus, the Board dismissed the charge of a violation of *RPC* 1.4(a) and (b). Also, given the finding that Taveras approved of the loan to Suarez so that she could repay Rodriguez, the misappropriation charge [*RPC* 1.15 and *RPC* 8.4(c)] was dismissed.

Lastly, the presenter appeared to concede that the record did not contain clear and convincing proof of any fraud or misrepresentation on respondent's part with respect to the escrow letter to Mejia. In light of the undisputed testimony that respondent immediately telephoned Mejia and informed him that she was not holding $14,500 in her trust account in Taveras' behalf, the Board dismissed the charged violations of *RPC* 4.1(a)(1) and *RPC* 8.4(c).

In summary, the only clear misconduct here was that respondent engaged in a conflict of interest situation when she failed to withdraw from representation after a dispute developed.

In mitigation, it should be considered that respondent acted out of a good-faith desire to help her clients reach an amicable resolution. She was not motivated by self-interest. To the contrary, she received no compensation for her services in this matter. It should also be

noted that, at the time of the conduct, respondent had been practicing for nineteen years with no disciplinary history.

As to the DEC's recommendation that respondent return $650 in her trust account to Suarez, the Board found that determination to be outside the province of the attorney disciplinary system.

It is well-settled that, absent egregious circumstances or economic injury to clients, a reprimand constitutes sufficient discipline for engaging in a conflict of interest situation. *In re Berkowitz*, 136 *N.J.* 134 (1994); *In re Porro*, 134 *N.J.* 524 (1993); *In re Doig*, 134 *N.J.* 118 (1993); *In re Woeckener*, 199 *N.J.* 273 (1990); *In re Paschon*, 118 *N.J.* 430 (1990). Here, although Suarez suffered economic injury – the foreclosure of her home – such loss should be laid at Taveras' doorstep, not respondent's. His failure to remove himself from the property and to compensate Suarez for his occupancy resulted in the loss of her home. Finding that such economic injury should not be attributable to respondent, the Board unanimously determined to impose a reprimand. In addition, respondent must serve under the guidance of a proctor for one year. Three members did not participate.

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

Dated: 6/9/09

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD VOTING RECORD

In the Matter of Mercedes de la Reza
Docket No. DRB 99-024

Argued: March 18, 1999

Decided: June 9, 1999

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			x				
Zazzali							x
Brody			x				
Cole			x				
Lolla			x				
Maudsley							x
Peterson			x				
Schwartz			x				
Thompson							x
Total:			6				3

By Isabel Frank 7/21/99
Robyn M. Hill
Chief Counsel