SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-067 (formerly DRB 12-336)
District Docket Nos. XIV-2008-0494E, XIV-2008-0638E, and XIV-2009-0510E

IN THE MATTER OF GEORGE J. OTLOWSKI, JR. AN ATTORNEY AT LAW	Decision

Decided: September 17, 2014

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

This matter was before us on remand from the Supreme Court to "determine the appropriate quantum of discipline to be imposed [on respondent] for the violations of RPC 8.1(a) and RPC 8.4(c) found by the Board in DRB 12-336." These RPCs address an attorney's false statement of material fact in connection with a disciplinary matter (RPC 8.1(a)) and conduct involving dishonesty, fraud, deceit or misrepresentation (RPC 8.4(c)).

The Office of Attorney Ethics (OAE) seeks a six-month or a one-year suspension, whereas respondent argues that he should receive either "no penalty" or an admonition or, "at worst," a "public reprimand." For the reasons set forth below, we determine to impose a three-month suspension on respondent for the above violations.

Respondent was admitted to the New Jersey bar in 1968. At the relevant times, he maintained an office for the practice of law in Perth Amboy. He has no disciplinary history.

This matter was first before us on June 20, 2013, on a special master's recommendation for disbarment, based on his finding that respondent had participated in a Ponzi scheme, in his role as counsel to New Jersey Affordable Homes Corporation (Affordable Homes) and its president, Wayne D. Puff. Affordable Homes was in the business of purchasing and renovating distressed real estate properties with funds from individual lenders. When it ran into financial trouble, it carried out a Ponzi scheme by using the funds of new lenders to pay its obligations to pre-existing lenders and to Puff's personal creditors. Respondent was implicated in the scheme because he had received the loan proceeds in escrow, deposited them into his attorney trust account, and disbursed the funds pursuant to

Puff's instructions. Although many participants in the Ponzi scheme went to jail, including Puff, no criminal charges were brought against respondent.

The special master also recommended the imposition of separate admonitions for respondent's misrepresentations on an application for professional liability insurance and for his reliance on a real estate appraisal that he knew was bogus.

In our December 16, 2013 decision, we found that, of the many charges of unethical conduct lodged against respondent, the clear and convincing evidence established only that he had (1) misrepresented to Donald McHugh (McHugh) and to the OAE that the McHughs' funds,[1] which had been deposited into respondent's attorney trust account, were frozen by a court order when, to the contrary, they had been disbursed to various parties, (2) misrepresented to the OAE that, even though he had failed to obtain a discharge of mortgage from the McHughs, following the sale of a property purchased with their funds, he was able to accomplish a discharge, without their signatures, by filing an

[1] One of the loans to Affordable Homes came from McHugh, his wife, and his wife's parents. Collectively, they will be referred to as the McHughs' funds.

affidavit, under N.J.S.A. 46:18-11.7,[2] and (3) made misrepresentations on an application for professional liability insurance. After a careful, independent review of the record, however, we recommended that the Court appoint a special investigator to ascertain the meaning of a particular provision in the loan agreements between Affordable Homes and its lenders to determine whether an amended complaint, charging respondent with the knowing misuse of escrow funds, under In re Hollendonner, 102 N.J. 21 (1985), should be filed.

The Court determined that, because of the passage of time since the filing of the complaint against respondent, the matter should be remanded to us for the assessment of the appropriate level of discipline for the violations that we found, that is, RPC 8.1(a) and RPC 8.4(c).

For ease of reference, we set forth the pertinent facts and findings in DRB 12-336.

---

[2] Although respondent would not have been able to discharge the mortgage under that statute because he was neither the agent nor attorney-in-fact for the McHughs, upon further review of the record, we do not believe that there is clear and convincing evidence that respondent made that claim to the OAE, knowing that the statute did not apply to him. We, therefore, dismiss that charge.

Puff, through Affordable Homes, solicited funds from "investors," whose monies Affordable Homes would use to purchase distressed properties at below market value and to finance their renovation. The properties would then be sold at a profit. Respondent represented Affordable Homes in its purchase of the distressed properties and in the preparation of mortgage notes and mortgages subsequently placed on those properties in order to secure the loans.

A written loan agreement governed the business relationship between Affordable Homes and its lenders. The loan agreement gave Affordable Homes sole discretion to transfer the lenders' funds to another property at any time during the term of the loan, as long as the funds were secured by a first mortgage lien. Puff would determine which mortgage would be allocated to which property.

Respondent acted as an escrowee with respect to the loans for the real estate transactions, by maintaining them in his trust account, where they were to remain until it was appropriate to release them in accordance with the terms of the loan agreements.

MISREPRESENTATIONS TO MCHUGH AND TO THE OAE

In January 2005, Donald and Pat McHugh and her parents loaned a total of $250,000 to Affordable Homes. The terms of the loan were set forth in a written agreement.

On January 25, 2005, Affordable Homes purchased a property in Newark for $132,000, with a portion of the $250,000 McHugh loan. Respondent represented Affordable Homes in the transaction and acted as the settlement agent at closing. According to the HUD-1, which respondent prepared, the cash due from Affordable Homes was $138,733.95, representing the $132,000 purchase price and $6,928.89 in settlement charges, including a $2500 fee to respondent.

On the same date as the closing, January 25, 2005, Affordable Homes entered into a $250,000 "construction" mortgage note with the McHughs for the Newark property. The note was secured by a "construction" mortgage prepared by respondent and recorded on February 22, 2005.

By January 28, 2005, respondent had disbursed $249,450 of the McHughs' funds, including $83,366.05 to Affordable Homes.

Seven months later, on August 31, 2005, unbeknownst to the McHughs, Affordable Homes sold the Newark property to Lawrence Bronfman for $302,000. Respondent represented Affordable Homes.

Anthony Natale, a now disbarred New Jersey attorney, represented Bronfman and acted as settlement agent.

At respondent's direction, his paralegal instructed Natale to issue a $250,000 trust account check payable to respondent's trust account, for the benefit of the McHughs. The paralegal's memorandum to Natale stated that respondent "will be responsible for obtaining the discharge(s) of mortgage and will record them as well."

Natale complied with respondent's paralegal's instructions and issued a $250,000 check to respondent's trust account, where it was deposited the next day. Respondent did not pay off the McHughs' mortgage. Instead, their $250,000 was reallocated to a new property, in Pemberton, by way of a mortgage.

The Pemberton property was purchased for $12,500, with a loan by Cornerstone Realty. None of the McHughs' funds were used toward the purchase price. Instead, out of the $250,000, respondent, as the settlement agent, disbursed $22,500 to Cornerstone, presumably to pay off the Cornerstone loan, and $227,380.06 to parties unrelated to the Pemberton transaction. The McHughs knew nothing about the sale of the Newark property and the purchase of the Pemberton property.

On September 9, 2005, respondent wrote the following letter to the McHughs:

> The purpose of this letter is to confirm this office returned the sum of $250,000.00 to escrow on August 31, 2005 as the above referenced property wherein your monies were secured has been sold. These monies will be held in escrow pending reallocation in another property. Once the monies have been reallocated this office will forward copies of the closing documentation for your records.
>
> Therefore, enclosed please find a discharge of mortgage for your signature. Kindly execute the signature page where indicated, **in the presence of a Notary Public only**, and return to this office in the envelope provided herein. In the event you are unable to sign in the presence of a notary public, kindly sign the enclosed and return with a copy of your driver's license.
>
> Kindly give this matter your earliest attention.
>
> [Ex.P33.]

As indicated previously, the McHughs' $250,000 was not in respondent's trust account on August 31, 2005, as respondent had represented in his letter. On that date, respondent's trust account held only $119.94 of the McHughs' funds.

On September 12, 2005, the United States Securities and Exchange Commission (SEC) filed a civil suit against Affordable Homes and Puff, alleging, among other things, that they had

overvalued the properties securing the lenders' notes, used the funds of new lenders to pay prior lenders, and transferred "substantial funds and assets" from Affordable Homes to Puff and his family. On that same date, the court entered an order freezing all of Affordable Homes's funds, including those held in respondent's trust account.

When the judge in the SEC suit froze respondent's trust account, respondent held $119.94 of the McHughs' funds. During an interview with the OAE, respondent stated that he could not return the McHughs' $250,000 because their funds, which were in his trust account, had been frozen by the September 12, 2005 order.

Respondent made the same claim to McHugh. Specifically, in September 2005, McHugh sent two letters to respondent, demanding full payment of the $250,000, plus interest and late fees. Respondent did not reply to the letters. Sometime after September 21, 2005, McHugh called respondent and asked him whether he had the funds and when they would be returned to him. Respondent replied simply that his trust account had been frozen and that "it" was out of his hands. He mentioned nothing of the SEC action, of which McHugh was unaware, or that only $119.94 of the McHughs' funds remained in his trust account.

Based on our de novo review of the record in DRB 12-336, we found that respondent had violated RPC 8.1(a), by misrepresenting to the OAE, during its investigation, that the McHughs' funds were part of the trust account funds that had been frozen by the SEC. We noted that only $119.94 of the McHughs' funds was frozen. The remainder had already been disbursed, as discussed previously.

We also found that respondent had violated RPC 8.4(c), by misrepresenting to McHugh that the McHughs' funds were in his trust account, although frozen by the SEC. At the time of this statement, respondent was well aware that all but $119.94 of the $250,000 had been disbursed by September 7, 2005, five days before the freeze.

MISREPRESENTATIONS ON THE APPLICATION FOR MALPRACTICE INSURANCE

In August 2008, the Office of Insurance Fraud Prevention (OIFP) filed a complaint against respondent, charging him with making several misrepresentations on his application for malpractice insurance, in violation of the New Jersey Insurance Fraud Prevention Act (the Act). OIFP's lawsuit against respondent was settled.

The parties filed a stipulation of settlement with the court, in June 2009. Respondent testified that he had agreed to settle the case because of the cost of defending the action.

The stipulation of settlement provided, in pertinent part:

> IT IS HEREBY STIPULATED AND ACKNOWLEDGED by defendant George J. Otlowski, Jr., that he made misleading statements on his professional liability insurance application with Certain Underwriters Lloyds of London by failing to disclose certain professional liability claims previously made against him, possible future claims that could be made against him relating to his representation of NJ Affordable Homes and the extent of his representation of NJ Affordable Homes.
>
> IT IS HEREBY STIPULATED AND AGREED that this conduct constitutes a violation of N.J.S.A. 17:33A-1 et seq., and that any future violation of the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 et seq., shall be considered a subsequent violation;[3] and
>
> . . . .

---

[3] N.J.S.A. 17:33A-4(b) provides, in relevant part, that a person or practitioner violates the Act if he or she "[p]repares or makes any written or oral statement, intended to be presented to any insurance company or producer for the purpose of obtaining . . . an insurance policy, knowing that the statement contains any false or misleading information concerning any fact or thing material to an insurance application or contract" (emphasis added).

> IT IS HEREBY STIPULATED AND AGREED that this Stipulation of Settlement may be used against Defendant in any civil or administrative proceeding related to a violation of N.J.S.A. 17:33A-1 et seq., including a license suspension or revocation proceeding[.]
>
> [Ex.P113.]

Respondent also signed a consent judgment, requiring him to pay a $5000 civil penalty and $3163 in costs and attorney fees. He claimed that he did not know that, by settling the matter, the Attorney General would refer it to the OAE.

Based on our de novo review of the record, in DRB 12-336, we found that respondent had violated RPC 8.4(c), by making misrepresentations on an application for professional liability insurance.[4]

In mitigation for the totality of respondent's conduct, we noted, in DRB 12-336, that respondent had served on the board of trustees of Middlesex County College for twenty years and that he was the attorney for the South Amboy Board of Education for twenty years, the Piscataway prosecutor for four years, and the prosecutor and public defender for Carteret for two-to-three

[4] At the disciplinary hearing, an RPC 8.1(a) charge based on the same set of facts was dismissed, at the OAE's request.

years. As of October 31, 2011, he was the public defender in South Amboy. In addition, he has represented, pro bono, "a lot of churches of all different denominations," for many years.

Given the Court's directive in its remand order to us, we now turn to the quantum of discipline to be imposed for respondent's misrepresentations to McHugh, to the OAE, and on the insurance application.

Attorneys who have made a false statement of material fact to a third person have been reprimanded. See, e.g., In re Frey, 192 N.J. 444 (2007) (reprimand for attorney who, while representing a purchaser, made a knowing misrepresentation to a real estate agent that he had received an additional down payment of $31,900 when he had not; when the attorney received from his client an $11,000 installment towards the deposit, he later released those funds to his client, despite his fiduciary obligation to hold them and to remit them to the realtor) and In re Mills, 127 N.J. 40 (1992) (reprimand for attorney who left a phone message for an adverse party falsely stating he was an IRS agent; mitigating factors considered were lack of disciplinary history and acknowledgement of wrongdoing).

This measure of discipline for misrepresentations to third parties, a reprimand, is consistent with the level of sanction

imposed for misrepresentations to clients. In re Kasdan, 115 N.J. 472, 488 (1989) ("intentionally misrepresenting the status of law suits warrants public reprimand"). Although it is true that McHugh and his family were not respondent's clients, respondent owed the same fiduciary duty to them, because he acted as the escrow agent for their funds.

A reprimand is typically imposed for a misrepresentation to disciplinary authorities, as long as the lie is not compounded by the fabrication of documents to cover up the misconduct. See, e.g., In re DeSeno, 205 N.J. 91 (2011) (attorney reprimanded for misrepresenting to the district ethics committee the filing date of a complaint on the client's behalf; the attorney also failed to adequately communicate with the client and failed to cooperate with the investigation of the grievance; prior reprimand); In re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who lied to the OAE during an ethics investigation of the attorney's fabrication of an arbitration award to mislead his partner and of the attorney's failure to consult with a client before permitting two matters to be dismissed); and In re Powell, 148 N.J. 393 (1997) (attorney reprimanded for violations of RPC 8.1(b) and RPC 8.4(c) based on his misrepresentation to the DEC, during its investigation of the client's grievance,

that his associate had filed a motion to reinstate an appeal when, in fact, the motion had not yet been filed; the attorney's misrepresentation was based on an assumption rather than an actual conversation with the associate about the status of the matter; the attorney also was guilty of gross neglect, lack of diligence, and failure to communicate with the client).

An attorney who, like respondent, made misrepresentations on an application for malpractice insurance received a three-month suspension. In re Paul, 167 N.J. 6 (2001). The attorney committed other unethical acts, as well. Specifically, he misrepresented to his client that he had reported the client's malpractice claim to his existing insurance carrier. After the attorney failed to answer the client's complaint, a default judgment was entered against him. Later, he misrepresented, on an application for malpractice insurance to a different carrier, that he had never had a claim asserted against him. He then sought to vacate the default judgment, claiming, in an affidavit, that the writ was his first notice of the malpractice claim. He repeated that story during a deposition. The attorney's pattern of misrepresentations, self-gain, and "the element of misrepresentation" in his prior ethics matters were viewed as aggravating factors.

Taken as a whole, respondent's infractions demonstrate a troubling pattern of deception toward multiple parties, as in Paul. For the totality of respondent's conduct, we determine that a three-month suspension is appropriate. The passage of time, the absence of a disciplinary history in respondent's lengthy career, and his public service and charitable activities do not justify anything less than a suspension, given his demonstrated disregard for the truth.

Member Gallipoli did not participate. Members Hoberman and Singer abstained.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of George J. Otlowski, Jr.
Docket No. DRB 14-067

Decided: September 17, 2014

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Dismiss	Abstained	Did not participate
Frost		X				
Baugh		X				
Clark		X				
Gallipoli						X
Hoberman					X	
Singer					X	
Yamner		X				
Zmirich		X				
Total:		5			2	1

Ellen A. Brodsky
Chief Counsel