

B

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-310
District Docket No. XIII-05-033E

IN THE MATTER OF
BRUCE E. BALDINGER
AN ATTORNEY AT LAW

:
:
:
:
:
:
:
:
:
:
:

Decision

Argued: January 17, 2008

Decided: April 17, 2008

Nancy McDonald appeared on behalf of the District XIII Ethics Committee.

David H. Dugan, III appeared on behalf of respondent.

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

This matter came before us on a recommendation for discipline (a suspension of unspecified duration) filed by the District XIII Ethics Committee. The complaint charged respondent

with violating RPC 1.7 (conflict of interest) and RPC 1.8(a) (business transaction with a client). For the reasons expressed below, we determine that respondent should receive a reprimand.

Respondent was admitted to the New Jersey bar in 1984. He has no disciplinary history.

The undisputed facts establish that respondent and grievants, Charles Smith and Michael Bassillo, agreed that grievants would buy and renovate a house, and then sell it to respondent. After the renovations were completed, respondent informed grievants that he would not buy the house. Although the circumstances surrounding this transaction were fiercely contested at the hearing, the record establishes that (1) respondent represented grievants when they bought the property and (2) respondent did not disclose to grievants the terms of the transaction in writing; did not advise them, in writing, to seek independent counsel; and did not obtain their written consent to the transaction and his role in it.

In 2001, respondent formed a real estate development corporation, Bassillo/Smith LLC, for grievants. Although Smith had been employed in the computer field, both he and Bassillo had construction experience. Bassillo was a licensed real estate appraiser. Respondent also provided other legal services for

grievants over the years. As partial payment for these legal services, Smith performed computer work for respondent. In addition, respondent and grievants, particularly Smith, developed a close friendship.

The following is grievants' version of the events. In August 2003, respondent told Smith that, because he was getting divorced, he needed a place to live. In December 2003, respondent asked Smith to give him his opinion about a house in Peapack. After looking at the property, Smith expressed the opinion that he and Bassillo could renovate it. Because the lot was oversized, the parties discussed the possibility of subdividing it and selling the vacant lot to a developer.

Because respondent did not have the funds at that time, the parties agreed that grievants would buy and renovate the property, and then sell it to respondent for their purchase price, plus the costs of the improvements. Although Smith asserted that grievants would also receive a small profit, Bassillo testified that he intended to charge respondent only his cost and that the sole profit would be obtained from the sale of the subdivided lot. The parties contemplated that the renovations would cost between \$40,000 and \$45,000. Respondent expected to sell a Florida property in 2004, and to use those

sale proceeds, plus a mortgage loan, to buy the Peapack property from grievants. In addition, the parties agreed that, if the lot were subdivided, they would share equally in the profit from the sale of the subdivided lot. Pursuant to this agreement, after grievants took title, respondent would live in the house during the renovations and would be responsible for the mortgage payments.

This agreement was not reduced to writing. Although respondent was also acting as grievants' attorney in the transaction, he did not disclose the terms of the agreement in writing, advise them to retain independent counsel, or obtain their written informed consent to the transaction.

On February 27, 2004, Bassillo bought the Peapack property for \$400,000, taking title only in his name, because Smith's credit score was lower and Smith had filed both personal and corporate bankruptcy petitions. The closing took place at respondent's office. Respondent's name appears on the real estate contract as the attorney for Bassillo. Respondent and Neal Guthrie, an attorney who worked in respondent's office, represented grievants at the closing.

Because grievants had obtained one hundred percent financing, they were not required to provide funds toward the

purchase price. Grievants understood that respondent would pay the closing costs. During the closing, however, respondent informed grievants that they were required to pay closing costs of \$15,000 and that, if they did not have the money, they would not be able to close title. Because Bassillo had signed the real estate contract, he was concerned about potential liability if he did not proceed with the closing. He, thus, immediately obtained \$15,000 from a home equity loan and the closing was completed.

The contemplated renovations included converting the property from a two-family home back to its original condition as a one-family home, plus adding a master bathroom, walk-in closet, and laundry room; installing walls; remodeling a kitchen; replacing windows; and updating the electrical and plumbing systems. These renovations were performed according to respondent's specifications. The upstairs floor plan, as respondent requested, provided for two bedrooms. The only bathroom on the second floor was the master bathroom.

After grievants began removing walls as part of the renovations, they discovered that the plumbing and other systems did not comply with the building code. As a result, the code inspector ordered that the house could not be occupied until it

was brought in compliance with the building code. Respondent, who had been living in the house, was required to relocate.

The parties discovered, in May or June 2004, that the lot could not be subdivided.

Respondent paid the mortgage in April, May, and June 2004. Toward the end of July, respondent informed grievants that he would not buy the house, as they had agreed. Grievants told respondent that they wanted him to pay \$600,000 for the property. According to Bassillo, on July 28, 2004, respondent told grievants that the price of the house was too high, that he could not afford to buy it, and that he had already bought another property. In contrast, Smith testified that respondent had not purchased another property, but was renting a house with an option to buy it.

Bassillo testified that grievants had spent \$120,000 on the renovations, which were completed in August or September 2004.

As a result of respondent's failure to proceed with the transaction, grievants were required to pay the mortgage and to find another buyer for the house. Although they listed the property with several realtors, they were unable to sell it.

Grievants first listed the property with Katrina Tarplin, in November 2004. Although they planned to list the house for

sale for \$609,000, Tarplin recommended listing it for \$639,900. Grievants entered into a series of listing agreements with other realtors, reducing the price to \$599,000 and ultimately to \$549,000. According to Smith, the property did not sell because the only bathroom on the second floor was the master bathroom. Indeed, Peter Engelmann, a real estate agent with whom grievants had listed the property from March to September 2006, opined that, if the floor plan had been more traditional, the property would have sold quickly. He also stated that, in 2004, the real estate market "was a roller coaster that was only going up" and that, when he listed the property, he did not know that the market was going down.

At some point in 2005, Bassillo refinanced the property, obtaining \$100,000 from the increased equity, with which he paid the mortgage, utilities, and other carrying charges. After the refinance, the mortgage payments increased from \$3,000 to \$5,000. Grievants obtained additional funds for the Peapack property by selling property owned by Bassillo/Smith in Plainfield, and by Smith's refinancing the mortgage on his residence.

After several months, grievants had no additional funds to pay the carrying charges for the property. The final mortgage

payment was made in October or November 2005. In August or September 2006, the bank holding the mortgage on the Peapack property foreclosed the loan.

Smith estimated that he and Bassillo had spent approximately \$700,000 on the property, including the mortgage payments, the renovations, the refinance, the loss of income from the Plainfield property, Smith's residential refinance, and the expenses of marketing the Peapack property. Despite having received a subpoena from respondent's counsel, Smith failed to produce at the DEC hearing any records, such as invoices or canceled checks, documenting the renovation expenses.

Bassillo asserted that he had borrowed \$60,000 from his home equity line of credit, charged \$25,000 on his credit cards, and borrowed \$15,000 from a private lender to pay for the renovations. In addition, grievants exhausted all of Bassillo/Smith's resources to keep the property afloat. Using the funds obtained by refinancing the property, Bassillo paid the charges that he had incurred on his credit cards, paid the home equity line of credit, and gave himself and Smith \$4,500 each. Although Bassillo had not reviewed his credit report, he claimed that his credit had been "devastated." He anticipated that a judgment would be entered against him after the bank sold

the property. He estimated that he and Smith had suffered losses of between \$775,000 and \$800,000. Bassillo, too, failed to produce documents, as requested by respondent's subpoena and did not provide any records to support his financial losses.

At the hearing, respondent sought to impeach Smith's credibility. Smith had served a prison sentence as a result of an armed robbery that he had committed when he was seventeen years old. Moreover, during cross-examination, respondent's counsel questioned Smith about an unspecified disorderly persons offense in Plainfield, in 1991. Although Smith acknowledged that the date of birth and social security number on a document¹ were his, he did not recall the conviction.

To further impeach Smith's credibility, respondent pointed out that, in 2004, when grievants and respondent were involved in the Peapack transaction, Smith knew that the New Jersey Board of Real Estate Appraisers was investigating Bassillo for improprieties. In addition, with respect to Bassillo/Smith's real estate development business, three of the six properties were sold to Dominion Enterprises, whose principal was

¹ The document, presumably a judgment of conviction, was neither identified nor introduced into evidence.

subsequently indicted for mortgage fraud. Smith also conceded that Bassillo/Smith never actually bought those properties, but had "brokered" the deals, received "finder's fees" of \$5,000 to \$10,000.

As to Bassillo, he revealed, at the DEC hearing, that his real estate appraiser's license had been revoked, explaining that the State's investigation of Dominion Enterprises showed that he had performed appraisals in seven of twenty-eight properties involved and that he had made serious errors in his appraisal reports.² Bassillo conceded that the August 2005 court decision, by which his appraisal license was revoked, concluded that he had issued several misleading or deceptive appraisal reports. Bassillo also acknowledged that he had three marijuana convictions and had served six months in a county jail. On cross-examination, Bassillo further admitted that he had been convicted of possession of an illegal gun.

Neal Guthrie testified that he worked for respondent on a per diem basis and that respondent asked him to handle the closing. Despite Guthrie's representation, however, it was

² Respondent attached as an exhibit to his written summation to the DEC a copy of a February 1, 2007 complaint filed by the Attorney General alleging that Bassillo continued to perform real estate appraisals after his license had been revoked.

respondent who negotiated the terms of the real estate contract, via a January 29, 2004 letter to the seller's attorney. In addition, in a February 25, 2004 letter to that attorney, respondent changed the closing date.

In contrast, respondent presented the following account. He met Smith in the late 1980s, representing him in several matters, and the two became friends. Respondent met Bassillo in 2000 or 2001, when Smith indicated that they wanted to become involved in real estate. Respondent also represented Bassillo in the proceeding for his appraiser's license, and in connection with the drug charge.

According to respondent, in December 2003, after he confided to Smith that his wife was pressuring him to vacate the marital home, Smith stated that he and Bassillo had discussed respondent's circumstances and had agreed that they would buy property, rent it to respondent, and sell it to him when he was financially able to buy it. Respondent told Smith that, although he was interested in the Peapack property, he could not spend more than \$435,000 for both the house and the renovations.

Grievants then offered to buy the property, perform improvements within respondent's budget, and sell the property to him when he had the funds. Respondent would be responsible

for the mortgage, taxes, and other carrying costs. The purchase price would be grievants' cost, plus repairs and improvements, not to exceed \$435,000.

Although early in the discussions about the transaction, respondent suggested that grievants retain separate counsel, they declined to do so, indicating that they wanted respondent to handle the matter on their behalf. Respondent conceded, however, that he had not advised them, in writing, to retain another attorney and that he had not obtained their written consent to the transaction and to his role in the transaction.

Respondent explained that he had asked Guthrie to handle the closing, because he felt more comfortable if grievants could talk "frankly" to another attorney. According to respondent, Guthrie handled the transaction after the attorney review period had expired. At the closing, the parties discovered that closing costs were required. Respondent told grievants that he could not pay those costs and suggested that they cancel the transaction. Bassillo, however, insisted that he would obtain the funds and complete the purchase.

Although respondent expressed concerns about the cost of the renovations, Smith reassured him that Bassillo's brother

would perform the construction, that people in the industry owed Smith favors, and that he could obtain the renovations "cheap."

Respondent claimed that, at some point, grievants began making decisions about the property, such as the color of the master bathroom and the color of the exterior paint, without consulting him. When he questioned Smith about these design choices, Smith replied that the house was not his and that he had no input in these decisions.

In late June, grievants told respondent that, because they had put a lot of work into the property, the price now was \$630,000 to \$640,000. They informed respondent that Bassillo had performed an appraisal, that the property was worth \$640,000, and that, despite the agreement to sell the house to him for their cost, they had set the price at \$640,000. Respondent protested that the price was contrary to their agreement, that the property was not worth \$640,000, and that the cost was beyond his budget. Respondent understood that the cost of the renovations had been \$35,000, the original budget amount, or \$45,000.

On July 28, 2004, grievants demanded a decision from respondent, who told them that he would not buy the property. Bassillo replied, "I was hoping you were going to say that,"

shook his hand, and appeared happy about respondent's refusal to buy the property. Smith, too, appeared happy, stated that he understood respondent's position, and promised that, after they sold the property, grievants would reimburse respondent for his payments.

In turn, Smith denied that he was happy about respondent's decision not to buy the property, complaining that he was "stuck" with the house.

On October 15, 2004, respondent entered into a ten-year lease with Chris Wade, another client-friend, providing that respondent had the exclusive right to buy a piece of property in Far Hills for "\$610,000 or such price paid for by" Wade. Respondent stated that he had entered into a written agreement because he did not want to make the same mistake that he had made with grievants.

At the time of the ethics hearing, respondent continued to rent the property and had an option to buy it. Respondent denied any knowledge of the existence of the Far Hills property before grievants had demanded \$600,000 for the Peapack property.³

³ The record contains references to two different prices: \$600,000 and \$640,000.

Realtor Katrina Tarplin contradicted grievants' testimony about the listing price of the Peapack property. According to Tarplin, grievants set the value of the property at \$640,000 and determined the listing price of \$639,900. They did not solicit Tarplin's opinion of the listing price.

At the hearing, Tarplin opined that the grievants' listing price had been too high and that the unusual floor plan contributed to the failure to sell the house.

Richard West, a securities arbitration and regulatory attorney, appeared as a character witness for respondent, testifying that respondent has always "acted in an ethical and honest manner in every capacity".

The DEC found that, by representing Smith and Bassillo when he had a personal interest in the transaction, respondent engaged in a conflict of interest, a violation of RPC 1.7(a)(2). The DEC further found that respondent also violated RPC 1.8(a)(1), (2), and (3), by engaging in a business transaction with clients without complying with the safeguards of that rule.

The DEC recommended a suspension, without specifying the duration. The DEC further recommended that respondent be investigated for the transaction with Chris Wade.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is supported by clear and convincing evidence. The undisputed facts support violations of both RPC 1.7(a)(2) and RPC 1.8(a). Indeed, respondent admitted a "technical" violation of RPC 1.8(a).

Unquestionably, both grievants had an attorney-client relationship with respondent. He formed their corporation, Bassillo/Smith LLC. He also represented both of them individually. Although respondent formed a friendship with each grievant, they remained clients.

Notwithstanding his attempts to insulate himself from the purchase of the property, respondent performed legal services in connection with that transaction. His name appeared as Bassillo's attorney on the real estate contract. As demonstrated by a letter to the seller's attorney, respondent was involved in the negotiation of that contract. He also changed the closing date. In addition, he was present at the closing, which took place at his office. Moreover, he arranged for Guthrie, an attorney who had performed per diem work for him, to appear on grievants' behalf at the closing. We, thus, find that, although respondent tried to create the appearance that Guthrie represented Bassillo

in the real estate transaction, respondent continued to provide legal services in connection with that matter.

Respondent argued that there was no conflict because he and grievants had a unity of interest, that is, they both wanted Bassillo to take title to the property. We are satisfied, however, that respondent engaged in a conflict of interest. He was the attorney for grievants. The interests of respondent and grievants became adverse after a dispute arose about the responsibility for payment of the closing costs. Bassillo understood that respondent was to pay those costs, while respondent claimed that they were Bassillo's responsibility. An independent attorney may have advised Bassillo that he was not required to pay the closing costs. Bassillo paid those costs because he was concerned about potential liability for breaching the real estate contract if he did not proceed with the transaction.

Respondent's representation of grievants, thus, was materially limited by his own personal interest, a violation of RPC 1.7(a)(2).

In addition, respondent violated RPC 1.8(a) by entering into the agreement with grievants without complying with the safeguards of that rule. He admitted that he had not disclosed

the terms of the transaction to grievants in writing; that he had not advised them to consult independent counsel; and that they had not given their informed consent to the terms of the transaction and to his role in it.

Worse yet, respondent was simultaneously representing grievants when difficulties arose. Respondent agreed to allow grievants to buy and renovate property and to buy that property from them at a future date, when he had the financial resources. The parties differed over design details. Unforeseen code violations were discovered. After the renovations were completed, the parties disagreed about the purchase price. In In re Doyle, 146 N.J. 629, 643 (1996), the Court discussed RPC

1.8(a) violations:

Repeatedly, we have warned attorneys of the dangers of engaging in business transactions with their clients. *E.g.*, *In re Humen, supra*, 123 N.J. at 300, 586 A.2d 237. An attorney should refrain from engaging in a business transaction with a client who has not obtained independent legal advice on the matter. *In re Barrett*, 88 N.J. 450, 453, 443 A.2d 678 (1982). We apply that rule because an attorney's judgment can be impaired by his self-interest. In such a situation, an attorney has a duty to explain carefully, clearly, and cogently why independent advice is needed. *In re Humen, supra*, 123 N.J. at 300, 586 A.2d 237.

We find, thus, that respondent violated RPC 1.7(a)(2) and RPC 1.8(a)(1), (2), and (3).

It is well-settled that, absent egregious circumstances or serious economic injury to clients, a reprimand is the appropriate discipline in conflict-of-interest situations. In re Guidone, 139 N.J. 272 (1994); In re Berkowitz, 136 N.J. 134, 148 (1994).

If the conflict of interest causes serious economic injury or the circumstances are more egregious, terms of suspension have been imposed. See, e.g., In re Hilbreth, 149 N.J. 87 (1997) (three-month suspension imposed on attorney who secured loans from a client to himself and brokered loans from that client to other clients without making the disclosures required by RPC 1.8(a)); In re Shelly, 140 N.J. 501 (1995) (six-month suspension for attorney who borrowed funds from his client without advising her to seek independent legal counsel; the attorney also failed to comply with the recordkeeping rule); In re Dato, 130 N.J. 400 (1992) (one-year suspension for attorney who represented both parties in a real estate transaction, purchased property from a client for substantially less than its actual value, and resold it ten days later for a \$52,500 profit); In re Griffin, 121 N.J. 245 (1990) (one-year suspension for attorney who entered into a

business transaction with a client who was unable to manage her affairs properly; the attorney did not fully disclose to the client the consequences of the transactions or advise her to seek independent counsel); In re Humen, 123 N.J. 289 (1991) (two-year suspension for attorney who engaged in numerous sensitive business transactions with his client; the attorney concealed his adverse pecuniary interest from the client); In re Harris, 115 N.J. 181 (1989) (two-year suspension for attorney who induced his client to lend large sums to another client of whom the attorney was a creditor, without informing the first client of the financial difficulties of the borrowing client).

Although, in this case, grievants alleged that they had suffered substantial losses and although they received subpoenas directing them to produce documents relating to the renovations, they failed to produce any evidence of their economic injury. Indeed, grievants did not rebut respondent's testimony that, when he expressed concern about the renovation costs, Smith assured him that the costs would be low because Bassillo's brother would perform the construction and because grievants would deal with people in the industry who owed Smith favors.

Moreover, the credibility of both grievants was questionable. They were less than forthcoming about their

criminal records, revealing some, but not all, of their offenses. Their testimony contradicted that of their realtor, Katrina Tarplin. Bassillo's license revocation for issuing several misleading or deceptive real estate appraisals does not speak well of his integrity, particularly in the light of his attempt to minimize the seriousness of his conduct by testifying that the appraisals contained "errors."

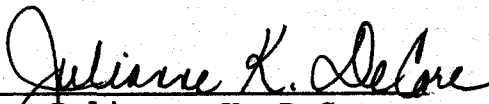
Furthermore, respondent's misconduct may not have been the cause of any damages that the grievants may have incurred. Some of the problems stemmed from the unforeseen code violations. In addition, as Engelmann testified, the real estate market suffered a downturn. These events cannot be attributed to respondent's ethics violations. Moreover, grievants may pursue civil remedies against respondent, if appropriate.

We consider, in mitigation, that respondent, who has been an attorney for twenty-three years, has no disciplinary history. Because there does not appear to be any justification for deviating from the presumptive discipline, we determine that a reprimand is the appropriate discipline.

Chair O'Shaughnessy, and members Baugh, Lolla, and Neuwirth did not participate.

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
Louis Pashman, Vice-Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

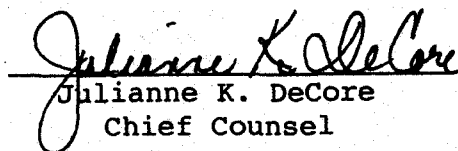
In the Matter of Bruce E. Baldinger
Docket No. DRB 07-310

Argued: January 17, 2008

Decided: April 17, 2008

Disposition: Reprimand

Members	Disbar	Suspension	Censure	Reprimand	Admonition	Did not participate
O'Shaughnessy						X
Pashman				X		
Baugh						X
Boylan				X		
Frost				X		
Lolla						X
Neuwirth						X
Stanton				X		
Wissinger				X		
Total:				5		4


Julianne K. DeCore
Chief Counsel