SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-233
District Docket No. XIV-2011-0599E

IN THE MATTER OF	:
WILLIAM J. TORRE	:
AN ATTORNEY AT LAW	:

Decision

Argued: October 16, 2014

Decided: February 10, 2015

Maureen Grasso Bauman appeared on behalf of the Office of Attorney Ethics.

Respondent, through counsel, waived appearance for oral argument.

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

This matter was before us on a recommendation for a censure filed by the District IIA Ethics Committee (DEC). A two-count complaint charged respondent with having violated RPC 1.8(a) (conflict of interest; improper business transaction with client) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The Office of Attorney Ethics

(OAE) is seeking at least a three-month suspension. We agree with the DEC that a censure is appropriate.

Respondent was admitted to the New Jersey bar in 1984. He has no prior discipline.

In his reply to the grievance, in his answer, and in testimony at the DEC hearing, respondent admitted that he violated RPC 1.8(a). He had known Marcella DeLeeuw for many years, as a customer at his parents' laundromat, in his hometown of Hasbrouck Heights, before becoming her attorney, in the early 1990s. He first prepared her will and, later, performed other legal services for her.

As DeLeeuw grew older, she lost most of her eyesight, leaving her increasingly dependent on others to complete various daily tasks. For example, she relied on her mail carrier to draft checks for her. When she became uncomfortable with that arrangement, she sought respondent's help. According to respondent,

> [o]ccasionally, she'd ask me to – you know, or my secretary – she'd ask my secretary to pick up something from the drugstore for her. She made calls to my office. Sometimes there would be notes to me asking the girls to go to the drugstore for [her], can you pick up something at – light things. Nothing major. But she would be talking to my

> secretary. I had two different ones over the years and she be — befriended them.
>
> [T151-22 to T152-5.][1]

On June 18, 2008, at age eighty-six, DeLeeuw executed a power-of-attorney in favor of respondent, so that he could assist her with the payment of bills, other financial obligations, and her general affairs. She also executed a new will, which respondent prepared, designating him as executor of her estate. Respondent's employees witnessed DeLeeuw's execution of the will.

On or about June 24, 2008, respondent borrowed $89,250 from DeLeeuw. Respondent prepared a note, which he and DeLeeuw signed. The loan amount represented about seventy-five percent of DeLeeuw's entire assets. The loan was unsecured and contained a provision requiring that the note be paid in full by August 31, 2008, or prior to that, upon demand.

Respondent conceded that he neither advised DeLeeuw, in writing, of the desirability of seeking independent legal counsel nor obtained her written consent to the terms of the

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[1] "T" refers to the transcript of the March 12, 2014 DEC hearing.

transaction or his role in it. He testified that he did, however, orally advise her of the above:

> I was at her house the day before, I believe, and we were – we were talking. And she asked me how things were going with me and the family.
>
> And I told her that things were starting to – the bills were starting to climb up on me a little bit. I had to pay tuition and a few other payments regarding my mortgage. And she asked if she could help. And she said, how much do you need. I said, about 100,000. And I believe that she said that she could help me.
>
> And she – I – she said, how could we do that. I said, well, I can prepare a note, we can sign it, we can review it. And so we prepared a note for her and [I] went over the next day to her house and she signed it. I explained it to her. I sat there – my secretary Jessica was there with me. I read it to her in full. I explained it to her. I told her she should get the advice of an attorney. She didn't want to hear it. And she signed it. And she wrote out a check.
>
> [T154-7 to T155-1.]

According to respondent, during the next several months, DeLeeuw asked him to make changes to her will. He explained to her that he could not represent her, because she was now his creditor.

On October 15, 2008, respondent brought DeLeeuw to the law office of Paul A. Dykstra to discuss his retention for the preparation of her will. Respondent explained the loan to Dykstra, providing him with a copy of the note and DeLeeuw's

most recent will. Respondent told Dykstra that a new will was advisable, because he had drafted the prior will, had been named as its executor, and had an outstanding loan from her. Respondent then left Dykstra's office.

At that meeting, Dykstra discussed the outstanding note with DeLeeuw, which was past due. At the DEC hearing, he testified that DeLeeuw expected respondent to repay the loan, but did not wish to remove him as executor of her estate. According to Dykstra, DeLeeuw was sensitive about the loan issue:

> And I asked her — I said to her that as [respondent] had pointed out, the note was past due. And she was -- she got a little upset because she said she didn't want to talk about the note, she fully expected that Mr. Torre would repay her, that she fully trusted him, and then she went into a litany of all of his relatives that she knew. But she was aware of it. And she told me no more talking about the note.
>
> [T71-9 to 17.]

Dykstra prepared a new will for DeLeeuw, which she signed, on December 2, 2008.

Respondent initially made only two payments on the loan — the first on May 6, 2009 ($2,500) and the second on June 2, 2009 ($7,500). Shortly thereafter, DeLeeuw retained Peter Banta to file a lawsuit against respondent. On July 10,

2009, Banta filed a complaint, in the Superior Court of New Jersey, Bergen County, seeking a judgment for the balance due on the note, plus interest, fees, and costs. Upon respondent's failure to file an answer to the complaint, a default was entered against him on October 5, 2009. On November 30, 2009, a $90,720.20 judgment was entered against him.

Respondent's last payment ($9,516.30) was made on January 28, 2011, after the "short sale" of real estate that he owned. He admitted that, despite demands for payment, he has not satisfied the note. In the following cross-examination exchange with the presenter, respondent explained his circumstances:

> I had arranged – I think in 2011 my vacation home was – by that time, the market had flipped around and it was – it was underwater. And I had arranged with the lender to – in lieu of foreclosure to make a payment to [DeLeeuw] out of the proceeds, and they agreed.
>
> Q. Okay. And after that payment from the proceeds of your real – the sale of your real estate, there have been no further payments?
>
> A. No further payments.
>
> Q. And you know that there's a judgment against you still with regard to the balance due on the note?
>
> A. I'm very well aware of that.
>
> Q. Okay. When you borrowed the money from Mrs. DeLeeuw, I take it you had some debts?
>
> A. Yes. That's what I borrowed it for.

> Q. Okay. And you had mortgages that had to be paid?
>
> A. Yes. I had some installments of the mortgages. Yes.
>
> [T175-1 to 21.]

Respondent conceded that his failure to obtain DeLeeuw's written, informed consent to both the terms of the loan transaction and to his role in it, prior to entering into the loan transaction, violated RPC 1.8(a).

DeLeeuw filed a grievance against respondent on November 9, 2009, alleging that he had failed to advise her to seek independent counsel, before entering into the loan transaction. She passed away in December 2009, before the DEC investigator had an opportunity to interview her.

Prior to the DEC hearing, scheduled for October 12, 2011, respondent produced, for the first time, a June 25, 2008 letter to DeLeeuw, stating as follows:

> This letter confirms our discussion that I cannot represent you on the loan to myself as [a] conflict of interest exists.
>
> You have been advised to seek independent counsel due to the conflict of interest as I cannot provide advice for the reasons hereinbefore stated and you have advised you would speak with Paul Dykstra Esq.
>
> Please sign this letter acknowledging your acceptance understanding [sic] of the conflict of interest and your right to seek

> independent counsel and your waiver of this conflict of interest.
>
> [Ex.18.]

The letter was signed by respondent, but not by DeLeeuw.

Respondent testified that he had provided ethics authorities with documents and information about the matter from a loan file that he kept for DeLeeuw. It was not until 2011 when, in preparation for the DEC hearing, that he found the letter. He explained as follows:

> It was marked Marcella, rather than De Leeuw [sic]. And it was closed – I don't know when it was closed to be honest with you. But I said let me – let me look through this file and see what, you know, documents are in it, the hearing's coming up, maybe there's something relevant that I could present or something we didn't see or – or have. So I went through the file and I found a letter that was dated after the transaction. But I said, let me send it over to my attorney and see what he thinks of it and see what, you know, what he wants to do with it. I sent it to my attorney, John Carbone. And he said he has to send it down to the committee. That was in October of 2011. And that was the extent of it.
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> [T158-22 to T159-11.]

Respondent was not sure whether the letter had ever been sent to DeLeeuw, because he would not send the outgoing mail himself. He conceded that, even if it had been mailed on June 25, 2008, it was too late to satisfy RPC 1.8(a), which

requires written consent prior to the completion of the transaction.

Although the OAE sent an auditor to examine respondent's computer hard drive to ascertain the creation date of the June 25, 2008 letter, the investigation was inconclusive. The OAE presented no other evidence to challenge respondent's version of events about the authenticity of his June 25, 2008 letter to DeLeeuw.

At oral argument before us, the OAE urged the imposition of at least a three-month suspension, given the client's advanced age (eighty-six years) at the time of the transaction.

Respondent admitted, and the DEC concluded, that he had violated RPC 1.8(a). The hearing panel report noted that, even if respondent had adhered to the informed, written consent requirement of the rule, he was still in violation of it, because the terms of the transaction were not fair to the client, inasmuch as respondent was in financial difficulty, there was no immediate prospect of repayment, and the note was unsecured. The DEC cited In re Wolk, 82 N.J. 326, [333] (1980), wherein the Court stated:

> Lawyers have a duty to explain carefully, clearly and cogently why independent legal advice is required. When a lawyer has a personal economic stake in a business deal, he must see to it that his client

> understands that his objectivity and his ability to give his client his undivided loyalty may be affected.[2]
>
> The DEC concluded that it has no difficulty in finding that had the Grievant consulted with independent counsel, she would have been strongly advised against making the requested loan. The Respondent took advantage of his confidential relationship with his client.
>
> The gravity of the situation is compounded by the fact that most of the loan remains unpaid, even after almost 6 years.
>
> [HPR11-12.][3]

The DEC dismissed the charge that respondent had prepared the June 25, 2008 letter after the fact, in an attempt to deceive ethics authorities. Rather, it concluded that the OAE had not proven that the letter had not been prepared on June 25, 2008. The DEC accepted that the letter had been prepared after the transaction had taken place and that DeLeeuw had never signed it.

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[2] Wolk was disbarred because, rather than borrowing money from clients, he engaged in a scheme to defraud them out of their money. The Court stated that it "will no more tolerate the hoodwinking of helpless clients out of funds in a business venture that is essentially for the benefit of the lawyer than it will outright misappropriation of trust funds." In re Wolk, supra, 82 N.J. at 335.

[3] "HPR" refers to the hearing panel report, dated June 4, 2014.

The DEC considered, in mitigation, respondent's lack of prior discipline and the apparent good reputation that he enjoys, as evidenced by character-witness testimony. The DEC's recommendation for a censure was based on three aggravating factors: (1) respondent took advantage of his elderly client, when entering into the loan transaction; (2) he showed "no real remorse" for his actions; and (3) he has not taken steps to satisfy the judgment for more than five years, to the great detriment of DeLeeuw's estate.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Respondent engaged in a conflict of interest when entering into a business transaction with DeLeeuw, without observing the safeguards of RPC 1.8(a). We agree with the DEC, however, that the record does not clearly and convincingly show that respondent fabricated the June 25, 2008 letter to DeLeeuw. The OAE's own investigation was inconclusive as to the creation date of the letter, even after an OAE auditor examined respondent's computer hard drive. Respondent consistently maintained that the letter was created on June 25, 2008, a fact that the DEC accepted as true. For lack of clear and convincing evidence that

respondent engaged in any wrongful conduct regarding the letter, we dismiss the RPC 8.4(c) charge.

In the absence of egregious circumstances, when an attorney enters into a loan transaction with a client without observing the safeguards of RPC 1.8(a), the discipline has ranged from an admonition to a short suspension, depending on the existence of other factors such as additional ethics violations, significant harm to the client, or the attorney's prior discipline. See, e.g., In the Matter of John W. Hargrave, DRB 12-227 (October 25, 2012) (admonition for attorney who obtained from his clients a promissory note in his favor, in the amount of $137,000, representing the amount of legal fees owed to him, and secured the payment by a mortgage on the clients' house; the attorney did not advise his clients to consult with independent counsel, before they signed the promissory note and mortgage); In the Matter of Frank J. Shamy, DRB 07-346 (April 15, 2008) (admonition for attorney who made small, interest-free loans to three clients, without advising them to obtain separate counsel; the attorney also completed an improper jurat; significant mitigation considered); In the Matter of April Katz, DRB 06-190 (October 5, 2006) (admonition for attorney who solicited and received a loan from a matrimonial client; the attorney did not

comply with the mandates of RPC 1.8(a)); In the Matter of Frank J. Jess, DRB 96-068 (June 3, 1996) (admonition for attorney who borrowed $30,000 from client to satisfy a gambling debt; the attorney did not observe the requirements of RPC 1.8(a)); In re Monzo, 216 N.J. 331 (2013) (reprimand for attorney who purchased a parcel of unimproved real estate from a client whom he had represented in various personal and business matters; the attorney and the client also entered into a construction agreement whereby the client's construction company would perform preliminary work on the site where the attorney intended to build his house; ultimately, disputes arising out of these transactions led to "acrimonious, time-consuming and expensive" litigation between the attorney and the client; apparently, the client was made whole by way of a settlement agreement with the attorney; no prior discipline); In re Strait, 205 N.J. 469 (2011) (reprimand for attorney who, after being given use of a "companion" credit card of a close, longtime, elderly friend, for whom he had provided legal representation in three "minor matters" within a twenty-five year period, ran the balance up to nearly $50,000, which was beyond the credit limit and his ability to pay, and as to which he did not inform his friend, whose credit rating was compromised as a result; the attorney had also gained control over the friend's assets when she gave

him power of attorney and named him executor of her will; aggravating factors included the vulnerability of the friend, her "extremely close relationship" with respondent, the trust she placed in him, his failure to inform her of the accumulated debt, his false assurance to her that he would bring the account current, and his failure to return telephone calls that she made to him after she began to receive communications from a collection agency); In re Gertner, 205 N.J. 468 (2011) (reprimand for attorney who provided legal representation at the closings on houses that he and his business partner purchased and "flipped," without complying with the requirements of RPC 1.8(a); the attorney also negligently misappropriated client funds on four occasions); In re Cipriano, 187 N.J. 196 (2008) (motion for discipline by consent; reprimand for attorney who borrowed $735,000 from a client without regard to the requirements of RPC 1.8(a); he also negligently invaded client funds ($49,000) as a result of poor recordkeeping practices; two prior reprimands (one included a violation of the conflict of interest rules)); In re Moeller, 201 N.J. 11 (2009) (three-month suspension for attorney who borrowed $3,000 from a client without observing the safeguards of RPC 1.8(a), did not memorialize the basis or rate of his fee, and did not adequately communicate with the client; aggravating factors were the

attorney's failure to take reasonable steps to protect his client when he withdrew from the matter and his disciplinary record (a one-year suspension and a reprimand)).

Here, respondent borrowed seventy-five percent of an elderly client's life-savings. She likely did not fully understand the extent of her own need for those funds. Had she lived much longer than she did, there is little doubt that she would have needed those funds for her own purposes.

As the DEC noted, respondent did little to repay DeLeeuw's loan during her life. Since her passing, he has done even less. He is deeply indebted to her estate, a sizeable judgment remaining against him. Despite his thirty years at the bar without prior discipline and the testimony about his good character, we determine that his conduct toward his elderly, vulnerable client requires nothing short of a censure.

Chair Frost and Member Zmirich voted to impose a three-month suspension and filed a separate dissent.

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
Edna Y. Baugh, Vice-Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of William J. Torre
Docket No. DRB 14-233

Argued: October 16, 2014

Decided: February 10, 2015

Disposition: Censure

Members	Disbar	Three-month Suspension	Censure	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh			X			
Clark			X			
Gallipoli			X			
Hoberman			X			
Rivera			X			
Singer			X			
Yamner			X			
Zmirich		X				
Total:		2	7			

Ellen A. Brodsky
Chief Counsel