SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-273
District Docket No. XIV-2013-0359E

IN THE MATTER OF	:	
DANIEL J. ROY	:	
AN ATTORNEY AT LAW	:	Decision

Argued: November 20, 2014

Decided: February 18, 2015

Jason Saunders appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before us pursuant to R. 1:20-6(c)(1).[1] The Office of Attorney Ethics (OAE) filed a two-count complaint, charging respondent with violating RPC 1.1(a) (gross neglect),

[1] That rule provides that the pleadings and a statement of the procedural history of the matter may be filed directly with us, without a hearing, if the pleadings do not raise genuine disputes of material fact, respondent does not request an opportunity to be heard in mitigation, and the presenter does not request an opportunity to present aggravating circumstances.

RPC 1.3 (lack of diligence), and RPC 1.7(a)(2) (conflict of interest).

By letter dated August 22, 2014, the OAE informed us that respondent admitted the allegations of the complaint and waived a hearing on mitigation. The OAE did not object to our consideration of the mitigating factors set forth in respondent's certification and did not request a hearing to present aggravating factors.

Respondent was admitted to the New Jersey bar in 1975. He has no history of discipline.

The facts of this matter are as follows:

Respondent is counsel to Royal Title Service Inc. (Royal), a title company that he established and later transferred to his wife. Respondent represents Royal at closings, prepares letters, signs escrow account checks, and acts as its counsel. He receives fees for those services. His law office shares office space with Royal. As of the date of the formal ethics complaint, Opal Title Services (Opal) was in the process of acquiring Royal. Opal is a title company owned by respondent's stepson.

On April 26, 2012, respondent, as counsel for Royal, acted as the closing agent for grievant, Allyson Samuel, in the purchase of a home in Franklin Township, New Jersey. Respondent did not represent Samuel in connection with the transaction

itself. As closing agent, respondent was responsible for ensuring that the required disbursements were made in accordance with the HUD-1. He failed to do so in a timely manner, however.

Specifically, respondent failed to ensure that the second quarter 2012 property taxes were paid and failed to pay the water and sewer bills in a timely fashion. As a result of the unpaid taxes, Samuel's mortgage company increased her monthly payment to cover the shortage.

On May 21, 2012, Samuel notified respondent that the taxes had not been paid. More than a year later, in June 2013, they both participated in a conference call with the mortgage company. At that time, respondent agreed to remit funds to the mortgage company for the unpaid taxes and to reimburse Samuel the amount that she had already paid to it. Respondent again failed to make those payments.

Eventually, on August 22, 2013, sixteen months after the closing date, Royal issued a check to Samuel for $1,548.54, representing the unpaid taxes. On the same day, respondent issued a business account check to Samuel for $1,251.46, as reimbursement for costs, penalties, and interest imposed for his failure to pay the taxes timely.

On December 10, 2012, after Samuel had contacted respondent on several more occasions, Royal issued to her a $165.80 check

for the unpaid water and sewer bills. These final payments were made almost twenty months after the closing.

On October 31, 2013, as part of its investigation, the OAE requested a list of respondent's clients who had obtained title insurance from Royal. On November 15, 2013, respondent produced a letter enclosing the names of forty-three clients whom he had represented in real estate transactions and had obtained title insurance from Royal. On December 5, 2013, respondent informed the OAE that he did not have any written conflict-of-interest waivers from those clients.

Although respondent stipulated to these facts and did not request a hearing on mitigation, he submitted, with his answer to the complaint, a certification with an explanation of his conduct.

In his certification, respondent admitted that he failed to address Samuel's complaints in a prompt manner, for which he expressed embarrassment. He further acknowledged that he was aware of the potential conflict of interest between the title insurer and the buyer, but believed that he had taken the necessary precautions to avoid such a conflict. Nevertheless, he conceded the concurrent conflict-of-interest issue created by his representation of Royal, while serving as the closing agent. He understands now that he put himself in an improper position

and asks that, in determining discipline, we consider that no harm resulted from his mistakes.

Following a de novo review of the record, we are satisfied that it contains clear and convincing evidence that respondent's conduct was unethical.

Respondent violated RPC 1.1(a) and RPC 1.3, by failing to disburse tax payments, in accordance with the HUD-1, for sixteen months and sewer and water bill payments for twenty months. Respondent's inaction resulted in temporary damages to Samuel, in the form of an increased mortgage payment and accrual of additional interest. To compound these violations, respondent repeatedly failed to remedy the situation promptly, despite his awareness of his failures.

Respondent also violated RPC 1.7(a)(2) by engaging in a concurrent conflict of interest, when he represented forty-three clients in real estate transactions, while also serving as counsel to Royal, the company that issued the title insurance for those clients. Respondent exacerbated this conflict by representing these clients, when he had a personal interest in the title company.

Since 1994, it has been a well-established principle that a reprimand is the measure of discipline imposed when an attorney engages in a conflict of interest. If the conflict involves "egregious circumstances" or results in "serious economic injury

to the clients involved," discipline greater than a reprimand is warranted. In re Berkowitz, 136 N.J. 148 (1994). See also In re Mott, 186 N.J. 367 (2006) (attorney prepared, on behalf of buyers, real estate agreements that provided for the purchase of title insurance from a title company that he owned; notwithstanding the disclosure of his interest in the company to buyers, the attorney did not advise buyers of the desirability of seeking, or give them the opportunity to seek, independent counsel, and did not obtain a written waiver of the conflict of interest from them) and In re Poling, 184 N.J. 297 (2005) (attorney engaged in conflict of interest when he prepared, on behalf of buyers, real estate agreements that provided for the purchase of title insurance from a title company that he owned; he failed to disclose both his ownership of the title insurance company and the fact that the title insurance could be purchased elsewhere). But, see In re Cory J. Gilman, 184 N.J. 298 (2005) (attorney admonished for an imputed conflict of interest (RPC 1.10(b)), among other violations, based on his preparation of real estate contracts for buyers requiring the purchase of title insurance from a company owned by his supervising partner; in imposing only an admonition, we noted the following compelling mitigating factors: this was the attorney's "first brush with the ethics system; he cooperated fully with the OAE's investigation, and, more importantly, he was a new attorney at

the time (three years at the bar) and only an associate") and In the Matter of Frank Fusco, DRB 04-442 (February 22, 2005) (admonition by consent for a single violation of RPC 1.7(a) for failing to advise his clients of the inherent conflict resulting from dual representation and failing to obtain their consent thereto; we noted that the attorney, who represented the buyer and seller in a real estate transaction without their consent, "did not technically engage in a conflict of interest situation" because no conflict ever arose between the parties to the contract; special circumstances were (1) the attorney did not negotiate the terms of the contract but merely memorialized them; (2) the parties wanted a quick closing "without lawyer involvement on either side;" (3) the attorney was motivated by a desire to help friends; (4) neither party was adversely affected by his misconduct; (5) the attorney did not receive a fee for his services; and (6) he had no disciplinary record).

Here, respondent has the added violations of gross neglect and lack of diligence, conduct which ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, and the seriousness of the attorney's disciplinary history. See, e.g., In the Matter of Robert A. Ungvary, DRB 13-099 (September 30, 2013) (admonition for attorney who, in a civil rights action, permitted the complaint

to be dismissed for failure to comply with discovery, then failed to timely prosecute an appeal, resulting in the appeal's dismissal; the attorney also failed to inform the client of his decision not to pursue the appeal or of the appeal's dismissal); In the Matter of James E. Young, DRB 12-362 (March 28, 2013) (admonition imposed on attorney who failed to file any pleadings in a workers' compensation claim and failed to appear at court-ordered hearings, resulting in the petition's dismissal with prejudice for lack of prosecution; for the next five or six years, the attorney failed to advise the client of the dismissal and failed to reply to the client's repeated requests for information; the attorney later paid the client the amount he estimated the claim was worth ($8,500)); In re Calpin, 217 N.J. 617 (2014) (reprimand for attorney who failed to oppose the plaintiff's motion to strike his client's answer, resulting in the entry of a final judgment against his client; the attorney never informed his client of the judgment; notwithstanding the presence of mitigating factors, the attorney received a reprimand because of the "obvious, significant harm to the client," that is, the judgment); and In re Burstein, 214 N.J. 46 (2013) (reprimand for attorney guilty of gross neglect, lack of diligence, and failure to communicate with the client; although the attorney had no disciplinary record, the significant economic harm to the client justified a reprimand).

In mitigation, respondent has no prior discipline, since his 1975 admission to the bar; he readily admitted his violations; and he rectified any damage done to Samuel by communicating with the mortgage company and paying the accrued interest from his own funds.

In light of the foregoing, we determine that a reprimand is sufficient discipline for respondent's violations of RPC 1.1(a), RPC 1.3, and RPC 1.7.

Vice-Chair Baugh 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
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Daniel J. Roy
Docket No. DRB 14-273

Argued: November 20, 2014

Decided: February 18, 2015

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh						X
Clark			X			
Gallipoli			X			
Hoberman			X			
Rivera			X			
Singer			X			
Yamner			X			
Zmirich			X			
Total:			8			1

Ellen A. Brodsky
Chief Counsel