SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-207
District Docket No. XIV-2001-0006E

IN THE MATTER OF	
JAMES O. ROBERSON, JR.	
AN ATTORNEY AT LAW	

Decision

Argued: November 15, 2007

Decided: December 20, 2007

Lee Gronikowski appeared on behalf of the Office of Attorney Ethics.

Emil Cuccio 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 filed by the District IIA Ethics Committee ("DEC"), stemming from respondent's conduct in connection with a real estate transaction. A two-count complaint charged respondent with violating RPC 1.15(b) (failure to promptly deliver funds to which client or third party is entitled), RPC 3.3(a)(1), (4) and

(5) (lack of candor toward a tribunal), RPC 8.1(b) (failure to cooperate with disciplinary authorities), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

At the conclusion of the second day of hearing, the Office of Attorney Ethics ("OAE") made an oral motion to amend the complaint to conform to the proofs and to include a charge of knowing misappropriation. Subsequently, the OAE learned that its amendment application at that stage of the disciplinary process ran afoul of a Supreme Court ruling (In re Ruffalo, 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968)). In February 2007, the OAE withdrew its motion to amend the complaint.[1]

The DEC determined that respondent violated each of the charged RPCs and recommended a six-month suspension. For the reasons expressed below, we determine that a three-year suspension is warranted.

Respondent was admitted to the New Jersey bar in 1986, and to the New York bar in 1987. In May 2006, he received a six-month suspension for gross neglect in a real estate transaction, improperly taking a jurat on a mortgage document, and inflating his fee. In addition, he failed to communicate with his clients to ensure that they understood the transaction and essentially

[1] The hearing panel report, dated January 2007, does not refer to the attempted amendment to the complaint.

abandoned them by sending the mortgage banker, who had a conflict of interest, to complete the closing. In re Roberson, 187 N.J. 2 (2006).

In April 2002, respondent was temporarily suspended for his lack of cooperation with the OAE's investigation of this matter. In re Roberson, 172 N.J. 30 (2002). In addition, he has been ineligible to practice law since September 2001, for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. He now lives in Washington, D.C.

Count One

On November 24, 1999, respondent represented Spiros Pollatos ("Pollatos") in the sale of real property to Athanasios Pollatos, Spiros' father. Respondent had a professional relationship with Pollatos, allegedly a mortgage banker.[2]

Respondent testified that, at the time in question, his practice focused almost exclusively on real estate matters, fifty percent of which came from Pollatos. Pollatos was also respondent's landlord.

[2] The OAE's brief states that an October 2007 search of the internet-based licensee lists of the New Jersey Real Estate Commission and the New Jersey Department of Banking and Insurance revealed no licensee named Pollatos. Pollatos was the individual involved in the matter that led to respondent's six-month suspension.

The Pollatos real estate transaction was financed by Accredited Home Lenders ("Accredited"), which wired $330,024.47 into respondent's trust account for the closing.[3] As closing agent, respondent was required to satisfy a lien of $269,400.78 held by Delta Funding Corp. ("Delta"). Delta had filed a lis pendens on the property.

Line 506 of the HUD-1 form ("RESPA") that respondent prepared listed an amount of $269,400.78 due to Delta. According to respondent, on the closing date, Pollatos informed him that he was negotiating a "short-pay" with Delta, whereby Delta would agree to reduce the amount due by approximately $90,000.[4] Pollatos also told respondent that a second mortgage held by Mildred Cambria, a mortgage not reflected on the HUD-1, had been paid off. Respondent testified that the information on the HUD-1 was correct as of the date of the closing, based on the information that he had received.

At the DEC hearing, the presenter asked respondent about the Delta entry on the RESPA:

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[3] The mortgage was assigned to EquiCredit Corp. of America.

[4] In his answer, respondent stated that Pollatos had told him that he was negotiating the short-pay "immediately after the loan closing." Respondent testified that, in a twelve-month period prior to November 1999, he had worked on fifteen to eighteen short-pay transactions with Pollatos.

> . . . on Exhibit C-7, line 506, you indicate that you paid Delta the full amount, or $269,400.78 didn't you?
>
> A. I didn't show that I was going to – that I paid that amount. That's the amount that was owed.
>
> [2T63-19 to 24.][5]

There is no reference to a "short-pay" on either the RESPA or the title documents. Pollatos advised respondent that he would receive confirmation of the short-pay "in a few days," and that respondent would receive a satisfaction of a mortgage from Cambria. Respondent never contacted Delta to confirm the existence of the "short-pay" agreement and did not notify the title company or Accredited of the "short-pay." Respondent explained that he did not prepare an amended RESPA reflecting the "short-pay" because, in his experience, that was not the practice and was not required. According to respondent, he accepted Pollatos' representation about the "short-pay," based on their professional relationship and on the fact that Pollatos was a licensed mortgage broker with a $150,000 surety bond.

At the DEC hearing, the following exchange took place between the presenter and respondent:

> Q. So you sent Accredited Home Lenders a post closing package, correct?

[5] 2T refers to the transcript of the DEC hearing on June 22, 2006.

A. Yes.

Q. I assume, then, you sent them the RESPA, R-7?

A. Yes.

Q. And I assume you sent them copies of signed deeds and mortgages, correct?

A. Yes.

Q. And you sent them on November 26, 1999, two days after the closing?

A. Yes.

Q. This is Exhibit C-32. The letter is from you, to Delta, dated November 26, 1999. Am I correct?

A. Yes.

Q. You sent Delta a check that day for $7,939.18, certified check, correct?

A. Yup.

Q. According to one of those pages, last page, I believe, of the document, that is the exact amount of interest that Mr. Pollatos owed Delta from July 23, 1999 through November 29, 1999; am I correct?

A. Yup.

Q. So what you sent Delta after the closing was merely the interest that Mr. Pollatos had outstanding on the mortgage, correct?

A. Yes.

Q. The same mortgage on which Delta had filed a lis pendens, correct?

A. Yes.

Q. And you told Delta in your letter, "The proposed refinance did not occur as planned but we are still trying. We will keep you posted about future a [sic] closing."
That's what you wrote.

A. Uh-huh. Yes.

Q. So you sent a closing package to Accredited with R-7, the RESPA, among other documents, correct?

A. Yes.

Q. But you told Delta that the deal didn't go through?

A. Yes.

Q. And over the course of November 1999 to May 2000, you sent Delta a series of checks that came from the proceeds of the Accredited loan, correct?

A. Yes.

Q. And your purpose was merely to keep Pollatos out of foreclosure, correct?

A. Yes.

Q. So in other words, Mr. Roberson, this purchase and sale between the two Pollatoses was a dishonest transaction.

[Respondent's counsel] Objection.

[Panel Chair] Sustained.

[Presenter] Therewith, I'll ask another question.
There was no intent, was there, for Anasthasios [sic] Pollatos to purchase the

property from Spiros Pollatos; isn't that right?

A. No. That was accurate.

Q. Isn't it a fact, Mr. Roberson, the only reason this closing went through was so Spiros Pollatos could have enough money to stay off foreclosure for a few months?

A. I can't get into his intent for why he worked this transaction with this [sic] father.

Q. And didn't he tell you that was what he was going to do?

A. I don't recall that.

[2T93-5 to 2T96-2.]

During a period of three months after the closing, respondent issued checks to and for the benefit of Pollatos, using the funds still held in escrow. Among the payments was $80,500 to respondent himself, in satisfaction of loans that he had made to Pollatos.

Pollatos never gave respondent a copy of the "short-pay" agreement with Delta, the satisfaction of the Delta mortgage, or the satisfaction of the Cambria mortgage. According to respondent, in April or May 2000, when it became clear that Pollatos was not going to come up with the "short-pay" confirmation, respondent forwarded to Delta the balance of the funds he was holding for the Delta pay-off. Of the $269,400.78 that respondent originally held for Delta, he disbursed

$133,154.70 to Delta. The balance was disbursed to or for the benefit of Pollatos.[6] Respondent testified that the transaction had placed a strain on his relationship with Pollatos.

The Delta mortgage ultimately went into foreclosure. It became the subject of a lawsuit that Chicago Title Insurance Company ("Chicago Title") filed against respondent, Pollatos, Athanasios Pollatos, and Cambria. That litigation ended with a stipulation of settlement, in which the parties acknowledged that there were insufficient net proceeds to pay off (a) the mortgage encumbering the property, which was given to Accredited and later assigned to EquiCredit; (b) the outstanding judgments against Pollatos; and (c) the tax sale certificate encumbering the property. To satisfy the outstanding liens against the property, the parties agreed to pay as follows: Spiros Pollatos was to pay all amounts necessary to satisfy the judgments against him and an additional $25,000; Athanasios Pollatos was to pay $5,000; and respondent and Chicago Title were to pay the remaining "short-fall" (sixty-five percent and thirty-five percent, respectively). The payments from respondent were to be made by him personally and by his malpractice carrier (the carrier paid $105,000). According to respondent, he wanted to

[6] Pollatos was unwilling to cooperate with the OAE's investigation of this matter.

proceed to trial to clear his name, but his malpractice carrier thought it a better business decision to pay the claim.

One year after the closing, Russell M. Feinstein, the attorney for Chicago Title, reported to the OAE that respondent had not paid off the Delta lien and had not recorded the deed and mortgage. OAE investigator Robert Gudger investigated the matter, following the OAE's receipt of Feinstein's letter.

Gudger testified that, according to respondent, nothing untoward had occurred during the closing process. Respondent blamed the shortfall on the alleged "short-pay" that Pollatos had negotiated with Delta. Respondent contended that, until Feinstein contacted him, he was unaware that the original deed and mortgage for Accredited had not been filed. Respondent filed those documents on December 1, 2000.

When Gudger contacted a representative of Delta, he was informed that Delta had no knowledge of a "short-pay" negotiation. In fact, during the six months following the closing, respondent did not inform the company that the property had been sold.

Count one charged respondent with violating RPC 1.15(b), RPC 3.3(a)(1),(4), and (5), and RPC 8.4(c).

Count Two

In early 2001, respondent appeared for an OAE demand audit of his attorney books and records. Gudger testified that he had difficulty obtaining respondent's trust and business account records for his review and that he had to re-create records from third-party sources, in order to conduct his investigation. Occasionally, respondent would supply some documents to the OAE. Gudger recalled one occasion when respondent supplied a box of his records. Most of the documents, however, were not relevant to the transaction in question. In light of the poor state of respondent's recordkeeping, Gudger was surprised to learn that respondent is a CPA.

Respondent testified that he attempted to provide the requested documents to the OAE. He explained, however, that he was experiencing personal tragedy at the time, including the deaths of five family members and a divorce. He also became homeless and ill. Respondent stored his attorney records in various locations, including in garbage bags in his former wife's garage. He was unable to locate his records and believed that they had been thrown away. According to respondent, he had kept the Pollatos file because he knew that he needed it.

In May 2001, the OAE filed a motion for respondent's temporary suspension for failure to cooperate during the investigation. In June 2001, the Court entered an order allowing

respondent thirty days to comply with the OAE's requests. In July 2001, the OAE withdrew its motion, after respondent provided some documents.

In February 2002, the OAE filed a second motion for respondent's temporary suspension, after he failed to provide follow-up documents. The Court's March 2002 order gave respondent two weeks to comply with the OAE's demands. Otherwise, he would be automatically suspended, without further notice. Respondent was suspended in April 2002, following his failure to comply with the Court's March 2002 order. He remains suspended to date.

In respondent's April 2002 certification to the Court, in opposition to the OAE's motion, he stated that he had "won the underlying civil case" brought by Chicago Title. By way of explanation, respondent testified before the DEC:

> As far as I'm concerned, with regard to the underlying case, I did win the case. The consent order has no admission of guilty [sic] on my part. And Mr. Polatos [sic] or Spiros Polatos [sic] was forced to sell the properties that he was so – that he craved so much that was the subject of the litigation. He was forced to sell those. And an unrelated parcel of unrelated property as well as pay another $20,000 in cash [sic].
>
> [1T114.][7]

[7] 1T refers to the transcript of the DEC hearing on May 25, 2006.

Respondent attached to his certification the court's order of dismissal with prejudice.

Count two charged respondent with violating RPC 8.1(b).

The DEC determined that respondent violated RPC 1.15(b), RPC 3.3(a)(1),(4), and (5), RPC 8.1(b), and RPC 8.4(c).

The DEC noted that, as the closing agent, respondent was responsible for paying all the liens, and holding the funds in trust for their intended purpose. The DEC found that, despite Pollatos' representation that a "short-pay" would be negotiated, respondent failed to safeguard the funds when he turned them over to Pollatos. The DEC remarked that "[m]isconduct may not be excused because a client told the attorney to proceed in a certain way. The attorney must first consider any proposed course of action and determine that it involves no ethical compromise. In re Blatt, 65 N.J. 539 (1974)."

The DEC also found that respondent did not fully cooperate with the OAE and was unable to properly account for many of the requested business records, making it necessary for the OAE investigator to reproduce records obtained from third parties. Furthermore, the DEC noted, respondent's argument to the Court that he had won the underlying civil matter was not accurate because he did not disclose that he and his malpractice carrier had settled the matter. The DEC found disingenuous respondent's

"excuse" that he wanted to oppose the settlement but, instead, complied with his carrier's business decision. In the DEC's view, respondent's lack of candor toward the Court alone justified a long-term suspension.

The DEC recommended that respondent be suspended for six months. The DEC further recommended that, prior to reinstatement, respondent show proof that he attended trust account courses sponsored by the New Jersey State Bar Association (presumably, ICLE), as well as proof of psychological counseling.

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

We find that respondent's conduct in connection with the Pollatos transaction was egregious. Although he was experienced in real estate matters, he conducted no independent verification of the legitimacy of Pollatos' instructions to him. In the process, he not only prepared a RESPA with an entry that misled the lender and the title company, but also was instrumental in allowing Pollatos to pocket the fruits of his improper activities.

Respondent's explanations for his conduct are not worthy of consideration. He contended that the $269,400.78 on the RESPA

merely represented the amount of the Delta lien, as opposed to the amount that would be paid to Delta. A review of the RESPA, however, tells a different tale. The RESPA shows the following figures: a gross amount of $390,000 due the seller; a reduction of $319,090.78; and a balance due the seller of $70,090.22. The $70,090.22 balance was calculated by the deduction of, among other items, the $269,000 owed to Delta. Anyone looking at the RESPA would logically conclude that the entire amount owed to Delta had been paid. In this regard, the RESPA was misleading -- and respondent had to know that it was misleading.

Furthermore, as the closing agent, respondent owed a fiduciary duty to the lender, Accredited. He was not authorized to disburse funds until the first lien -- the Delta mortgage -- had been paid off. By disbursing the funds for other than their intended use, he breached his fiduciary duty to Accredited. And by signaling, on the RESPA, that the lien had been satisfied, he defrauded Accredited. The same holds true as to his duty to the title company, who had no reason to suspect that the first lien remained outstanding.

Moreover, respondent could not explain away his communication to Delta, in which he stated that the "proposed refinance did not occur as planned but we are still trying. We

will keep you posted about future a [sic] closing." That communication was blatantly, intentionally false.

Misrepresentations in closing statements, unaccompanied by other forms of misconduct, generally lead to the imposition of a reprimand. See, e.g., In re Spector, 157 N.J. 530 (1999) (attorney concealed secondary financing to the lender through the use of dual RESPA statements, "Fannie Mae" affidavits, and certifications); In re Sarsano, 153 N.J. 364 (1998) (attorney concealed secondary financing from the primary lender and prepared two different HUD-1 statements, thereby violating RPC 8.4(c)); and In re Blanch, 140 N.J. 519 (1995) (attorney failed to disclose secondary financing to a mortgage company, contrary to its written instructions).

At times, even when the misrepresentation to the lender appears in conjunction with other unethical acts, such as gross neglect or lack of diligence, a reprimand may still result. See, e.g., In re Agrait, 171 N.J. 1 (2002) (reprimand for attorney who failed to verify and collect a $16,000 down payment shown on the RESPA that he was obligated to escrow under the terms of the contract; he breached his fiduciary duty to the lender by failing to collect the deposit; in granting the mortgage, the lender relied on the attorney's representation about the deposit; he also failed to disclose the existence of a second mortgage prohibited

by the lender, thereby engaging in gross neglect and misrepresentation, and further failed to communicate the basis of his fee in writing); and In re Silverberg, 142 N.J. 428 (1995) (reprimand for attorney who learned, after a real estate closing, that his clients had concealed secondary financing; the attorney then failed to correct the inaccuracy on the RESPA; the attorney was also guilty of gross neglect and lack of diligence; strong mitigating factors considered, including a psychiatric disorder and a finding that the attorney was an innocent party in the scheme masterminded by the seller's attorney and the broker).

In more serious situations, suspensions have been imposed. See, e.g., In re De La Carrera, 181 N.J. 296 (2004) (three-month suspension for attorney who, in one real estate matter, failed to disclose to the lender or on the RESPA that the sellers had taken back a secondary mortgage from the buyers, a practice prohibited by the lender; in two other matters, the attorney also disbursed funds prior to receiving wire transfers, resulting in the negligent invasion of other clients' trust funds; the discipline was enhanced because the case proceeded on a default basis); In re Nowak, 159 N.J. 520 (1999) (three-month suspension for attorney who prepared two settlement statements that failed to disclose secondary financing and misrepresented the sale price and other information; the attorney also engaged in a conflict of

interest by representing both the second mortgage holders and the buyers); In re Fink, 141 N.J. 231 (1995) (six-month suspension for attorney who failed to disclose the existence of secondary financing in five residential real estate transactions, prepared and took the acknowledgment on false RESPA statements, affidavits of title, and Fannie Mae affidavits and agreements, lied to prosecuting authorities, and failed to witness a power of attorney); In re Alum, 162 N.J. 313 (2000) (one-year suspended suspension for attorney who participated in five real estate transactions involving "silent seconds" and "fictitious credits"; the attorney either failed to disclose to the primary lender the existence of secondary financing or prepared and signed false RESPA statements showing repair credits allegedly due to the buyers; in this fashion, the clients were able to obtain one hundred percent financing from the lender; because the attorney's transgressions had occurred eleven years before and, in the intervening years, his record had remained unblemished, the one-year suspension was suspended and he was placed on probation); In re Newton, 159 N.J. 526 (1999) (one-year suspension for preparing false and misleading HUD-1 statements, taking a false jurat, and engaging in multiple conflicts of interest in real estate transactions; a major factor in the imposition of a one-year suspension was the attorney's participation in the scheme to

defraud the lenders); In re Labendz, 95 N.J. 273 (1984) (one-year suspension for attorney who assisted his clients in obtaining a larger loan by submitting a fraudulent mortgage application and altering the contract submitted with the mortgage application to reflect a greater sale price); In re Panepinto, 157 N.J. 458 (1999) (two-year suspension imposed on attorney who pled guilty in federal court to conspiracy to commit bank fraud in connection with a fraudulent loan from the attorney to a client; the scheme involved deceiving a lender that the funds were available to the purchaser of real estate in order to induce a mortgage commitment); In re Frost, 156 N.J. 416 (1998) (two-year suspension for attorney who breached an escrow agreement, failed to honor closing instructions and prepared misleading closing documents, including the note and mortgage, the "Fannie Mae" affidavit, the affidavit of title, and the settlement statement; the attorney's ethics history included two private reprimands, a three-month suspension, and a six-month suspension); In re Kaplan, 154 N.J. 13 (1998) (attorney suspended for two years after pleading guilty to one count of an indictment charging him with wire fraud for making an interstate telephone call for the purpose of avoiding detection of misrepresentations made by the buyer and seller of realty, who had engaged in a scheme to defraud a lender); and In re Thomas, 183 N.J. 230 (2005) (three-

year suspension for attorney who prepared RESPA statements in two real estate transactions that contained fraudulent information and participated in a scheme to defraud lenders; prior admonition and one-year suspension).

It is well-settled that circumstantial evidence can add to the conclusion that a lawyer's conduct was knowing. In re Johnson, 105 N.J. 249, 258 (1987). Here, we find that, based on respondent's deceitful letter to Delta and his self-interest in Pollatos' obtaining the funds to repay him, respondent had the intent and motive to insert information on the RESPA that was patently false.

Respondent's conduct with respect to the closing is most akin to that in In re Thomas, supra, 183 N.J. 230 (2005) (three-year suspension), where the attorney prepared a fraudulent RESPA statement and joined in a scheme to defraud the lender. Unquestionably, respondent was a willing participant in the scheme engineered by Pollatos to defraud Delta and Accredited. That Thomas' misconduct occurred in two matters is offset by the balance of respondent's misconduct.

Turning now to respondent's statement to the Court that he won the civil suit, we find that he misled the Court as to the outcome of that matter. His argument that he made complete disclosure of the circumstances of the case in a prior

submission is meritless. Respondent could not have assumed that the Court would review documents other than the ones before it in April 2002.

Discipline for attorneys guilty of similar misrepresentations to courts has ranged from an admonition to a suspension. See, e.g., In the Matter of Robin Kay Lord, DRB 01-250 (2001) (admonition for attorney who failed to reveal her client's real name to a municipal court judge when her client appeared in court using an alias, thus resulting in a lower sentence because the court was not aware of the client's significant history of motor vehicle infractions; in mitigation, the attorney disclosed her client's real name to the municipal court the day after the court appearance, whereupon the sentence was vacated); In re Mazeau, 122 N.J. 244 (1991) (attorney reprimanded for failing to disclose to a court his representation of a client in a prior lawsuit, where that representation would have been a factor in the court's ruling on the attorney's motion to file a late notice of tort claim); In re Whitmore, 177 N.J. 472 (1990)(reprimand for municipal prosecutor who failed to disclose to the court that a police officer whose testimony was critical to the prosecution of a drunk-driving case had intentionally left the courtroom before the case was called, resulting in the dismissal of the charge);

In re D'Arienzo, 157 N.J. 32 (1999) (three-month suspension for attorney who made a series of misrepresentations to a municipal court judge to explain his repeated tardiness and failure to appear at hearings; we noted that, if not for mitigating factors, the discipline would have been much harsher); In re Mark, 132 N.J. 268 (1993) (three-month suspension for attorney who misrepresented to the court that his adversary had been supplied with an expert's report and created another report when he could not find the original; in mitigation, the Court considered that the attorney was not aware that his statement was untrue and that he was under considerable stress from assuming the caseload of three attorneys who had recently left the firm); In re Kernan, 118 N.J. 361 (1990) (attorney received a three-month suspension for failure to inform the court, in his own matrimonial matter, that he had transferred property to his mother for no consideration, and for failure to amend his certification listing his assets; the attorney had a prior private reprimand); In re Forrest, 158 N.J. 429 (1999) (six-month suspension for attorney who, in order to obtain a personal injury settlement, did not disclose to his adversary, to an arbitrator, and to the court that his client had died); In re Telson, 138 N.J. 47 (1994) (attorney suspended for six months after he concealed a judge's docket entry dismissing his

client's divorce complaint, obtained a divorce judgment from another judge without disclosing that the first judge had denied the request, and denied his conduct to a third judge, only to admit to this judge one week later that he had lied because he was scared); In re Cillo, 155 N.J. 599 (1998) (one-year suspension imposed on attorney who, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who, after being involved in an automobile accident, misrepresented to the police, to her lawyer, and to a municipal court judge that her babysitter had been operating her vehicle and presented false evidence in an attempt to falsely accuse the babysitter of her own wrongdoing; two members of the Court voted for disbarment).

As to respondent's failure to cooperate with the OAE, respondent contended that he attempted to cooperate, but that circumstances beyond his control hindered his ability to provide the requested documents. Gudger testified, however, that he was

unable to obtain even basic information from respondent, such as where he maintained his attorney bank accounts.

One final topic must be addressed. Unquestionably, this matter raises the specter of knowing misappropriation. Accredited gave the funds to respondent to be used for a specific purpose -- to pay off the Delta mortgage. Instead, respondent misused escrow funds by taking them for himself to pay off the loan he had made to Pollatos. Although he may have had Pollatos' consent to use the funds for another purpose, he clearly did not have Accredited's consent. Respondent, however, was not charged with knowing misappropriation. Therefore, that issue is not properly before us. We note that, in its brief to us, the OAE stated that "[a]ny further charges against respondent that involve knowing misappropriation will have to be brought in another complaint."

There remains the question of the appropriate level of discipline for respondent's grievous ethics offenses. This case is rife with serious aggravating factors. Respondent refused to admit any misconduct on his part and was moved by self-benefit, both to be repaid for his $80,500 loan to Pollatos and to appease his largest source of business. Furthermore, he received a six-month suspension in May 2006, while this matter was proceeding. At a time when he should have been introspective, he

refused to see any wrongdoing on his part. In that earlier matter, respondent's failure to acknowledge the extent of his wrongdoing and his lack of remorse were considered aggravating factors.

In view of the foregoing, we determine that the appropriate quantum of discipline for this respondent is a three-year (prospective) suspension. Because there is no indication in the record that respondent is mentally ill or that he did not possess the requisite legal skills to satisfactorily complete the transaction, we decline to impose the conditions suggested by the DEC.

Member Boylan, Neuwirth, and Baugh voted for a two-year suspension. Member Wissinger voted for an indeterminate suspension. Member Lolla 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
William J. O'Shaughnessy
Chair

By: Isabel Frank
for Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of James O. Roberson, Jr.
Docket No. DRB 07-207

Argued: November 15, 2007

Decided: December 20, 2007

Disposition: Three-year suspension

Members	Three-year Suspension	Two-year Suspension	Indeterminate Suspension	Disqualified	Did not participate
O'Shaughnessy	X				
Pashman	X				
Baugh		X			
Boylan		X			
Frost	X				
Lolla					X
Neuwirth		X			
Stanton	X				
Wissinger			X		
Total:	4	3	1		1

Isabel Frank
for Julianne K. DeCore
Chief Counsel