SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-278
District Docket Nos. XIV-00-302E

IN THE MATTER OF	
ERIC J. CLAYMAN	
AN ATTORNEY AT LAW	

Decision

Argued: November 17, 2005

Decided: December 28, 2005

Nitza Blasini appeared on behalf of the Office of Attorney Ethics.

Robert Agre appeared on behalf of respondent.

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

This matter was originally before us as a post-hearing ethics appeal filed by the Office of Attorney Ethics ("OAE"), following the District Ethics Committee's ("DEC") dismissal of the charges against respondent. We scheduled the matter for oral argument, after determining that respondent might have misrepresented the financial condition of a bankruptcy client in filings with the bankruptcy court.

Respondent was admitted to the New Jersey bar in 1985. He has no prior discipline.

The complaint alleged violations of RPC 8.4(c) (conduct involving dishonesty, deceit, fraud or misrepresentation); RPC 4.1(a)(1) and (2) (false statements of material fact to third persons and failure to disclose material facts to a third person when disclosure is necessary to avoid assisting a fraudulent act by the client); RPC 8.4(a) (knowingly assisting another in violating the RPCs); RPC 3.3(a)(1) (making false statements of material fact to a tribunal); RPC 3.3(a)(2) (assisting client in a fraud) and RPC 3.3(a)(5) (failure to disclose to a tribunal a material fact with knowledge that the tribunal may tend to be misled by such failure).

In October 1998, Henry Lubaczewki retained respondent to file a chapter 13 bankruptcy petition. Lubaczewski, a stockbroker/investor, sought bankruptcy protection primarily in order to discharge a $404,000 debt to Advest, Inc., a former employer. Advest had issued the loan as an incentive to Lubaczewski to join the company. The loan was to be forgiven if Lubaczewski remained employed with Advest for a certain period of time.

After only three months with Advest, Lubaczewski returned to work for his former employer, A.G. Edwards. Thereafter,

Advest made demand on the note, and the entire $404,000 became due. Lubaczewski, however, had spent much of the money and was unable to repay the loan.

On October 9, 1998, respondent filed a chapter 13 bankruptcy petition on Lubaczewski's behalf. The petition was augmented by schedules, the contents of which intended to shed light on the financial status of the debtor at the time of the filing.

Lubaczewski's schedule "F", listing the claims of unsecured creditors, contained only four entries, totaling $6,000. The $404,000 Advest loan was listed with a balance of zero; a debt to Lane & Mittendeit, LLP., was listed as $5,000; a debt to Lubaczewski's ex-wife was listed as "alimony," with a zero balance. Finally, a debt to Steven Deringer, Esq. was listed with a balance of $1,000.

Advest vehemently opposed respondent's characterization of its claim, opposed Lubaczewski's chapter 13, and pressed its claim in the bankruptcy proceeding for the full amount of its loan. As a result of Advest's persistence, depositions were taken of Lubaczewski and respondent.

Respondent's testimony led the chapter 13 trustee to scrutinize the Lubaczewski filings more carefully, during which other questionable actions came to light. For example, the

schedules failed to disclose Lubaczewski's debts to two credit card companies, FirstUSA and Fleet Visa. Both accounts had outstanding balances at the time of the bankruptcy filing. By not including those credit card accounts, Lubaczewski kept those companies in the dark about his true financial status, and continued to use their credit.

Respondent also revealed through testimony that the alimony debt to Lubaczewski's ex-wife, which he had characterized as having a zero balance, was actually equitable distribution of Lubaczewski's marital estate, in the amount of $330,000, as set forth in a written property settlement agreement that Lubaczewski had given to respondent.

In addition, question seven of Lubaczewski's statement of financial affairs required the disclosure of gifts over $200 to family members. Respondent failed to disclose a $17,000 gift to Lubaczewski's daughter and a $10,000 gift to his son. Rather, respondent listed only a $1,000 gift to Lubaczewski's daughter, which he characterized as repayment of a student loan.

Question eight of the statement of financial affairs required the disclosure of gambling losses, which Lubaczewski had advised respondent amounted to $3,500. Respondent failed to list any of those losses.

As a result of her findings, the trustee filed a motion in the bankruptcy court for sanctions against respondent, under Bankruptcy Rule 9011, claiming that respondent, had knowingly misrepresented Lubaczewski's financial status to the court and creditors. Respondent filed a reply denying wrongdoing.

On October 25, 1999, Gloria M. Burns, U.S.B.J., heard oral argument on the trustee's motion. With regard to the Advest loan, Judge Burns found that the claim was not unliquidated or contingent, and should have been listed as $404,000. She also found that respondent purposely failed to disclose the amount because, as respondent admitted at the hearing, he "didn't want to highlight it" for the trustee to find.

Judge Burns questioned respondent's handling of the equitable distribution issue, wherein respondent failed to list the $330,000 due to his ex-wife. Judge Burns stated, "It was a set amount. It wasn't unlimited alimony or child support . . . . The amount he owed her was fully known and he provided you with the information . . . . I mean, it wasn't just a mistake. You intended to do this." The judge ruled that respondent had concealed the true amount to avoid exceeding the total allowable debt-ceiling in a chapter 13 case.

Judge Burns also found troubling respondent's admissions about Lubaczewski's bankruptcy schedules. Respondent admitted

filing schedules and amendments with Lubaczewski's signature, without showing the documents to, or discussing them with, his client. Respondent couched his actions as typographical errors. The judge stated:

> But you're filing a paper with the Court that is supposed to be under penalty of perjury . . . That's — the problem I am having is you don't seem to understand the seriousness and significance of what I am telling you. You signed — you filed schedules in his name that he didn't review, that he didn't sign and he didn't agree to, regardless of how small or minor they were.
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> [Ex.OAE3 at 13.]

Regarding the FirstUSA and Fleet Visa credit card accounts, respondent admitted to the judge that he determined not to disclose them because the balances were low. The judge commented, "Where does it say in the [bankruptcy] code that your client gets to pick and choose which creditors he lists? . . . Do you understand what a debt is? If the debtor owes something that is outstanding, then it is a debt that has to be listed."

Judge Burns chastised respondent for his failure to list Lubaczewski's utility bills, stating, "You also testified that you never even asked Mr. Lubaczewski if he had outstanding utility bills," and noting that attorneys are required to do so because "many debtors who are in chapter 13, also have utility problems."

On the issue of Lubaczewski's gambling debts, the judge asked respondent why he had not listed an amount for those losses, given that his client had estimated them. Respondent replied that he had listed no amount in this case and "a hundred times" before, because the U.S. Trustee's Office had accepted blank answers in the past.

With respect to Lubaczewski's gifts to his children, the judge commented:

> You knew that the debtor made a $17,000 gift to his daughter and a $10,000 gift to his son but you didn't disclose the amounts of those on the petition and the reason you said was that you didn't want to necessarily draw a map to each and every issue that may present a problem.
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> [Ex.OAE3 at 27.]

In reply, respondent argued that he had filled the information out correctly, having partially disclosed the information elsewhere in the bankruptcy materials. Judge Burns pressed on:

> Well, if you answer it fully and completely, then the Trustee knows how much it is. If it [sic] $100.00 or $500.00, the Trustee may decide not to bother pursuing it but if you list $17,000.00, then you know the Trustee will probably pursue it and so, that's the reason you didn't list it. Right?
>
> . . . .
>
> Because you wanted to hide it from the Trustee, the creditors and the Court and

> that is the problem. Being half disclosure, sometimes can be as bad as no disclosure. You make it seem like it is an incidental nothing important thing when, in fact, it was a vital thing and in fact, in this one, you said something to the effect that in a Chapter 7 it would get – let's see, it'll get – in a Chapter 13, it kind of gets lost in the shuffle, while in a Chapter 7, a Chapter 13 Trustee would typically scrutinize it more carefully and perhaps bring an action. So, therefore, because Ms. Balboa has 5,000 cases, it is more likely than not that it might get not noticed in a Chapter 13 and that is exactly what I am talking about as far as misrepresentation, purposeful omissions.
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> [Ex.OAE3 at 28-29.]

Judge Burns determined that respondent had violated Rule 9011 of the Federal Rules of Bankruptcy Practice, which provides, in relevant part:

> (a) Signature. Every petition, pleading, written motion, and other amendments thereto, shall be signed by at least one attorney of record in an attorney's individual name. A party who is not represented by an attorney shall sign all the papers. Each paper shall state the signer's address and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is promptly corrected after being called to the attention of the attorney or party.
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> (b) Representations to the Court. By representing to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge,

information, and belief, formed after an inquiry reasonable under the circumstance,

(1) it is not being presented for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses and other legal contentions therein are warranted by existing law or by non-frivolous argument for the extension, modification, or severance of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose sanctions upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

Finally, Judge Burns opined that respondent may have violated

an obligation under the Rules of Professional Conduct to disclose to the Tribunal a material fact with knowledge that the Tribunal may tend to be misled by such failure. That's in RPC 3.3. It's also professional misconduct for a lawyer to

> engage in any context [sic] involving dishonesty, fraud, deceit or misrepresentation or to engage in conduct that is prejudicial to the administration of justice, RPC 8.4.
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> [Ex.OAE3 at 31.]

By order dated February 9, 2005, Judge Burns issued a reprimand and imposed a monetary sanction of $1,500 to compensate the trustee for her costs associated with the motion.

In the ethics proceedings, Lubaczewski stated that, when he first met with respondent about the possibility of a bankruptcy filing, he still possessed about $200,000 of the Advest loan, but had lost the remainder in speculative stock investments. He recalled that Advest had objected to the plan of reorganization, and that his case had been converted to a chapter 7 liquidation.

Lubaczewski retained a new attorney for the chapter 7 proceedings. The Advest claim issue was ultimately settled for $310,000 in Advest's favor.

The First USA and Fleet credit cards, according to Lubaczewski, had balances of $2,000 to $3,000 at the time he filed the bankruptcy petition. He further claimed that he had customarily paid his utility bills and credit card balances every month, and had given his account statements to respondent. He also recalled asking respondent if it was appropriate to make payments on the cards and continue using them. Respondent

advised Lubaczewski that he could continue using the credit cards.

Lubaczewski told respondent about the settlement agreement in the divorce action, wherein his ex-wife was awarded the house, his 401-k plan, furniture, and alimony. Lubaczewski also recalled giving respondent, prior to the petition, the amounts and dates of the $17,000 and $10,000 gifts to his children, as well as a $5,000 figure for gambling losses in Atlantic City. Lubaczewski had signed some of the documents in blank, at respondent's urging. According to Lubaczewski, some of the documents that respondent filed did not contain information that he had given respondent, such as the gifts to his children, the monthly alimony payment to his wife, and the amount of the Advest loan. In addition, the documents included information that Lubaczewski had never seen or approved for filing, such as a ten-percent commission rate for his earnings, which he stated was "totally wrong."

On cross-examination, respondent's counsel highlighted Lubaczewski's earlier 1999 deposition testimony in the bankruptcy case, in which Lubaczewski had pegged the amount of his gambling losses at between $2,000 and $4,000, not the $5,000 he claimed at the DEC hearing. When confronted with the discrepancy, Lubaczewski conceded that he had merely estimated

his losses on both occasions, and had no way of verifying the actual amount. Counsel also asked Lubaczewski if the reason why he had been denied a discharge after his chapter 7 proceedings was that the court had found him less than candid. Lubaczewski did not know why the court had imposed that restriction.

The complaint also charged respondent with misrepresenting the value of certain personal property belonging to Lubaczewski, including furs, stocks and a checking account, as well as the extent of his monthly bills. However, the presenter conceded at the DEC hearing that she had abandoned those issues.

Respondent retained a bankruptcy expert, Peter Broege, Esq., to analyze his actions in the Lubaczewski case. Broege's opinions are contained in his July 2, 2004 opinion-letter and his February 25, 2005 DEC testimony.

Broege acknowledged that respondent would have been better off if he had disclosed all of the information about Lubaczewski's financial status, which his client provided to him. However, Broege believed that respondent's failure to do so was not so serious as to present a deviation from the acceptable standards that govern bankruptcy practice. Rather, Broege considered respondent's overall handling of the Lubaczewski case a "stylistic issue."

Regarding the Advest loan, Broege stated that Lubaczewski had told respondent that he had counterclaims against Advest, and owed them nothing as a result. Broege thought that respondent's use of the figure $0.00 was acceptable practice, explaining that, because Advest had not obtained a judgment, the debt was clearly "subject to setoff, counter-claim, and mitigation, and . . . had not been liquidated." Broege went so far as to suggest that it made no difference what number respondent used, because contested, unliquidated claims, no matter the amount, are not used by the trustee in calculating the debt limits available to a chapter 13 debtor.

With regard to the credit card issue, Broege testified that Lubaczewski had utilized the FirstUSA and Fleet cards in lieu of cash, and that he had paid the balances in full each month. His opinion-letter reflected the same view. At the DEC hearing, Broege asserted that, "the great majority of consumer bankruptcy lawyers in the District of New Jersey would never schedule an ongoing utilized credit facility that is paid in full at the end of each month."

On cross-examination, Broege stated that, if a debtor did not use the cards in lieu of cash by paying the balances in full each month, then they must be included in the bankruptcy. He did not cite any bankruptcy authority for that position.

With respect to Lubaczewski's ex-wife's equitable distribution claim of $330,000, Broege stated in his opinion-letter that "it is unclear from the documents I have reviewed as to the nature of that obligation. I am not certain if the obligation is for alimony, child support, or some type of equitable distribution claim." He acknowledged in his testimony that, if the debt was equitable distribution, it was a liquidated liability subject to disclosure.

Broege characterized the large gifts to respondent's children as immaterial to the bankruptcy proceedings. He explained that, in a liquidation bankruptcy (chapter 7), the trustee may avoid, through an adversarial proceeding, certain preferential transfers made to insiders within a certain period of time. Broege insisted that, although Lubaczewski's gifts of $17,000 and $10,000 to his children fit into that category, chapter 13 trustees *do not pursue such gifts*. In Lubaczewski's case, the $27,000 in fraudulent transfers to the children

> weren't going to be material, because [Lubaczewski's] plan greatly exceeded the liquidation value of the debtor's assets as well as recovery of the full amount of the twenty-seven thousand dollars. The plan proposed to pay substantially more than that. So even if the trustee brought that into the calculation, it wouldn't have affected the amount that was being paid under the plan.

[T40-23 to T41-6.][1]

On cross-examination, Broege conceded that, if Lubaczewski had given respondent information about the dates and amounts of the gifts to his children, respondent was obligated to disclose that information in the bankruptcy petition, regardless of their pursuit value to the trustee.

With respect to respondent's filing of some of Lubaczewski's bankruptcy schedules without his client's required signature and review, Broege conceded that the practice was improper under the bankruptcy rules. He suggested, however, that it was a common practice.

Broege did not believe that respondent was blameworthy for his failure to list Lubaczewski's utility bills. He explained that, once a debtor alerts certain utility companies of their pending bankruptcy, the company is permitted to demand a significant deposit from the customer. Therefore, according to Broege, it is common for debtors' attorneys not to list utilities as creditors, as long as the debtor, like Lubaczewski, is current with his or her bills.

Broege ultimately faulted Lubaczewski for the problems in the bankruptcy case, stating that

[1] "T" refers to the transcript of the February 25, 2005 DEC hearing.

> [t]here was information that was not complete or accurate. However, there is a difference between an incomplete response and a false response. Moreover, the information is coming from the client and it is the lawyer's responsibility to represent his client's interests and to believe the information the client provides unless the lawyer knows the information is not true. In the instant case, I do believe that [respondent] could have provided better information when this bankruptcy case was filed. However, I do not believe that [respondent's] conduct rise [sic] to the level of intentional dishonesty, fraud, deceit or misrepresentation nor do I find anything in the documents I have reviewed that indicate [respondent] made a false statement of material fact to a tribunal as the information, if false, were statements that were made under penalty of perjury by the debtor.
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> [Ex.R-1 at 6.]

Broege also cast respondent's situation in a political light, in response to a question from the DEC panel regarding a "crackdown on the way petitions were filed." Broege stated that, for twelve years, he had been a law partner of Robert Wood, the chapter 13 trustee immediately preceding Balboa. According to Broege, Wood had a strained relationship with the U.S. Trustee's Office in Newark, which oversees the panel trustees for the District of New Jersey:

> They did everything they could to make his life miserable. He was involved with litigation when they refused to approve his budget and basically shut down his operation. I represented him before the

> United States District Court in an emergency matter to get his budget approved. And he basically had an adversarial relationship right up until the time of his death.
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> As a result of that, they were very critical of the way he administered cases.
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> [T35-11 to T35-21.]

When asked if he thought that respondent had been singled out by the new trustee, Broege continued:

> I think what I can say with a degree of comfort and certainty is this never would have happened, if Mr. Wood was the trustee. He would have never brought a motion like this for sanctions.
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> [T37-1 to T37-5.]

The DEC dismissed the charges against respondent, stating that he had been engaged in "sloppy, poor lawyering," but had not been "driven by evil motive or intent." The DEC specifically found that respondent's omissions on the bankruptcy documents were not material. In fact, according to the DEC, respondent's actions "would have been unimportant in almost any other case," but they were magnified here due to the intensity of the dispute over Advest's claim.

The OAE urged us to impose a reprimand.

Upon a de novo review of the record, we are satisfied that the record clearly and convincingly establishes that respondent was guilty of unethical conduct.

In finding that respondent's conduct was within the boundaries of acceptable bankruptcy practice, the DEC must have been greatly influenced by respondent's expert, who gave impressive, but one-sided, testimony. We find that the expert testimony was overshadowed, however, by respondent's own admissions and the clear findings of wrongdoing by Judge Burns.

First, with regard to Advest, respondent admitted that he had used the figure $0.00, instead of the known amount ($404,000), in order not to "highlight it" for the trustee. In fact, if respondent had listed the proper, larger amount, the chapter 13 trustee would have challenged the plan of reorganization, because that debt alone exceeded the total unsecured debt allowed under chapter 13.

Respondent and his expert claimed that respondent's depiction of the Advest loan ($0.00) was in response to his client's claim that he owed nothing to his former employer because of wrongs committed by Advest in his several months of employment with the firm. However, Lubaczewski testified that he never authorized respondent to list the debt as $0.00. Moreover, at the time, Lubaczewski still had possession of $200,000 of the Advest loan, and had signed the page in blank only at respondent's suggestion.

The bankruptcy judge saw none of the complexity suggested by respondent, using respondent's own admissions to find that he had sought to hide the true amount of the debt from the trustee, the court, and creditors.

We, too, see no such complexities. With regard to the FirstUSA and Fleet credit cards, by all accounts, Lubaczewski had been using those cards in lieu of cash, paying the entire balance each month. He had also given his statements to respondent at a time when they contained balances of $2,000 to $3,000. According to respondent's expert, it was common practice for debtors' attorneys not to list card-issuers of this type on the petition as creditors, if they were paid in full each month. However, Judge Burns pointed out that debtors are not allowed to "pick and choose" the debts and creditors that they list. Therefore, she properly found that respondent sought to conceal the existence of those creditors, so that Lubaczewski could continue to use those cards after filing the petition.

As to the equitable distribution of the marital estate, Lubaczewski recalled disclosing the amount and nature of the debt to respondent. Respondent and his expert sought to stretch the truth and view the $330,000 "in the nature of" an ongoing obligation such as alimony or child-support, which might have required disclosure of only a monthly obligation. However, the

bankruptcy court correctly pointed out that the situation was no different from a mortgage note, where the mortgage company's claim is for the entire amount required to extinguish the debt, not for the monthly mortgage payment. Once again, if respondent had used the proper figure, $330,000, that debt alone would have exceeded the debt-ceiling for a chapter 13 debtor. We find that respondent misrepresented the character and amount of the debt, in order to advance the chapter 13 prospects of his client.

The disclosure aspect of the gifts to Lubaczewski's children was also mishandled. Respondent improperly concealed those transactions from the trustee, the court, and creditors, in order to give his client an undue advantage in the bankruptcy. Respondent admitted that he had not revealed information given by his client because he did not want to "draw a map" for the trustee to issues that could present a problem for Lubaczewski. Respondent sought to minimize the significance of his omissions by pointing out that he had partially disclosed information about gifts elsewhere in the bankruptcy materials. That information referred only to a $1,000 payment on a student loan, and could not be considered notice of the larger gifts. Respondent's omission here was particularly troublesome because it intended to hide transactions that almost certainly would

have been litigated and sought for recovery by the chapter 13 trustee as fraudulent conveyances.

Respondent's expert lent scant support to respondent's handling of the gifts' issue, suggesting that the chapter 13 trustee might not have sought their recovery for the estate, but acknowledging that specific information about gifts to the children was required to be disclosed.

Respondent also admitted filing documents without his client's required signature or review. Respondent and his expert asserted no defense, but suggested that the practice was common in the consumer bankruptcy field. That this practice is pervasive is irrelevant to finding that respondent violated the bankruptcy rules by filing documents in that fashion.

Similarly, with regard to the issue of utility bills, respondent chose to ignore the bankruptcy rules requiring their disclosure. Respondent's purpose was to work a benefit to his client. His argument that some debtors have trouble posting a security deposit with utility companies makes little sense here, as Lubaczewski paid his utility bills in full each month.

Finally, with regard to the issue of Lubaczewski's gambling debts, Lubaczewski estimated the amount of his gambling losses at between $2,000 and $5,000. He conceded that he did not track his gambling, and could only guess that the correct amount

fell in that range. However, he recalled giving respondent information about the approximate dates and amounts of his losses. As such, respondent was required to disclose that information. He chose not to do so. Instead, he claimed to have listed gambling debts with no amount "a hundred times," because the U.S. Trustee's Office had accepted deficient disclosures in the past.

For all of the above reasons, we find it beyond question that respondent misrepresented the true nature of Lubaczewski's financial status in the bankruptcy petition, the debtor's statement of affairs, and the various schedules to the petition. He did so in order to conceal information detrimental to his client's hopes in chapter 13.

The information that respondent misreported or failed to disclose was critical to the trustee's analysis of Lubaczewski's case and necessary in order to avoid assisting a fraud upon the bankruptcy system – in particular, the attempted use of chapter 13 for relief, when Lubaczewski's financial status exceeded the use of that chapter under the rules. Furthermore, the amounts and dates of debts, which respondent routinely misstated throughout the bankruptcy, were also critical to the court's proper analysis of Lubaczewski's financial affairs.

In short, through misrepresentations of facts, omissions, incomplete documents and documents that lacked Lubaczewski's approval and signature, respondent sought more favorable treatment for his client – a chapter 13 discharge – than that to which his client was entitled. As Judge Burns found, respondent abused the bankruptcy system and the trust placed in him by the court. Altogether, respondent's conduct violated RPC 3.3(a)(1), RPC 3.3(a)(2), RPC 3.3(a)(5), RPC 4.1(a)(1), RPC 4.1(a)(2), RPC 8.4(c), and RPC 8.4(d) (conduct prejudicial to the administration of justice). Although respondent was not specifically charged with a violation of the latter RPC, the record contains clear and convincing evidence of violations of that rule. Furthermore, respondent did not object to the admission of such evidence in the record. In light of the foregoing, we deem the complaint amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

In aggravation, respondent is, by all accounts, an expert in consumer bankruptcy matters. He is certified by the American Board of Certification in consumer bankruptcy law; he lectures for the New Jersey Institute for Continuing Legal Education on chapter 13 and chapter 7 issues, and is a member of the Lawyers' Advisory Committee to the Bankruptcy Court for the District of

New Jersey. As such, he had to know that his practices in this case did not conform to bankruptcy rules.

In mitigation, respondent has no prior discipline, and appears to have been among the first attorneys in the local bankruptcy bar to experience changes in the U.S. Trustee's Office and the resultant strict requirements of a new chapter 13 trustee. If it is true that respondent and others in the bankruptcy bar may have used questionable practices with impunity under a prior set-up, we are given some perspective on his conduct, which should not, however, be excused. In addition, respondent does not appear to have acted out of venality or to have been motivated by a desire for self-gain. Rather, there is a suggestion or indication that he took advantage of a purportedly complacent bankruptcy system for the benefit of his client.

In cases involving primarily the lack of candor to a tribunal, although suspensions are the most frequent sanctions, the range of discipline is wide. See, e.g., In the Matter of Robin K. Lord, DRB 01-250 (2001) (admonition where the attorney 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 Whitmore, 117 N.J. 472 (1990) (reprimand where a municipal prosecutor failed to disclose to the court that a police officer, whose testimony was critical to the prosecution of a charge of driving while intoxicated, intentionally left the courtroom before the case was called, resulting in the dismissal of the charge); In re Vella, 170 N.J. 180 (2004) (three-month suspension where, in a divorce proceeding, the attorney assisted her client to conceal the death of the client's father – for whom he was acting as guardian – from the court, opposing counsel, and the decedent's spouse); In re Paul, 167 N.J. 6 (2001) (three-month suspension where the attorney made oral misrepresentations to his adversary and written misrepresentations in, among other things, a deposition and several certifications to a court); In re Forrest, 158 N.J. 429 (1999) (in connection with a personal injury action involving injured spouses, the attorney was suspended for six months for failing to disclose the death of one of his clients to the court, to his adversary, and to an arbitrator, and for advising the surviving spouse not to voluntarily reveal the death; the attorney's motive was to obtain a personal injury settlement); In re Cillo, 155 N.J. 599

(1998) (one-year suspension where, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, the attorney 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 where the attorney, who had been in an automobile accident, misrepresented to the police, her lawyer, and a municipal court judge that her babysitter had been operating her vehicle; the attorney also presented false evidence in an attempt to falsely accuse another of her own wrongdoing).

We find respondent's misconduct to be more serious than that displayed in Whitmore, where the attorney was reprimanded for failure to make a single disclosure to a municipal court. On the other hand, a period of suspension appears too severe, given the significant mitigating factors present here. Therefore, we determine that a censure is the appropriate degree of discipline for respondent's conduct. Judge Stanton and Member Lolla would have imposed a three-month suspension, finding that respondent's

conduct was fraudulent and egregious. Chair Maudsley and Vice-Chair O'Shaughnessy did not participate.

We also require respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Disciplinary Review Board
Louis Pashman, Esq.

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Eric J. Clayman
Docket No. DRB 05-278

Argued: November 17, 2005

Decided: December 28, 2005

Disposition: Censure

Members	Censure	Three-month Suspension	Dismiss	Disqualified	Did not participate
Maudsley					X
O'Shaughnessy					X
Boylan	X				
Holmes	X				
Lolla		X			
Neuwirth	X				
Pashman	X				
Stanton		X			
Wissinger	X				
Total:	5	2			2

Julianne K. DeCore
Chief Counsel