

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-318
District Docket No. IV-02-018E

IN THE MATTER OF
DAVID T. STOLLER
AN ATTORNEY AT LAW

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Decision

Argued: October 21, 2004

Decided: November 30, 2004

Shereen C. Chen appeared on behalf of the District IV Ethics Committee.

Respondent appeared pro se.

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

This matter was before us on a recommendation for discipline filed by the District IV Ethics Committee ("DEC"). The complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.15(a) (failure to safeguard client's property and failure to retain records for seven years), and RPC 1.16(d) (failure to protect client's interests upon termination of the representation).

Respondent was admitted to the New Jersey bar in 1975. In 1986, he received a private reprimand after he entered into a business transaction with a client without explaining the potential conflict of interest and without advising the client to seek the advice of independent counsel. Respondent no longer practices law in New Jersey.

The facts in this matter are not in dispute. On February 17, 1997, respondent represented Bonnie and Wayne Szpara, the buyers, in two real estate transactions. As the buyers' attorney, respondent was required to record the respective deeds and mortgages in connection with each transaction. Respondent failed to record any of the documents. In October 2001, more than four and a half years after the closings, Equity One, the lender in both transactions, discovered that the mortgages had not been recorded and notified the title company. First American Title Insurance Company ("First American"), the title insurance underwriter, sent letters to respondent's home address, receiving no response.

On December 13, 2001, First American contacted the Office of Attorney Ethics ("OAE"). Respondent told the OAE investigator that he had not practiced law for the past several years and had not retained any of his client files. Respondent further stated

that, after a dispute with his landlord, he had been evicted from his office and that the landlord had placed some of his files in storage.

When contacted by the OAE, respondent's former landlord stated that he had stored ten to fifteen boxes of documents from respondent's office for more than one year, before discarding them.

According to the complaint, respondent stated that he was not interested in participating in the OAE investigation and told First American that he was not willing to correct his failure to record the deeds and mortgages in the Szpara transactions. At the hearing, however, respondent denied having made those statements. According to respondent, he had told the OAE that he had no documents to provide because he no longer had his files. He also stated that he had required his clients' consent before releasing any information to First American, conceding that, even if his clients had consented, he still had no information or documents to provide. Eventually, substitute documents were executed and recorded.

With respect to the specific RPC violations, respondent denied that he was guilty of gross neglect or lack of diligence, contending that the title company should not have waited more

than four years to notify him that the documents had not been recorded.¹ He testified that, at the time of the Szpara transactions, he was conducting twenty to thirty closings per week and did not verify that documents were recorded after the closings. He admitted that he did not safeguard client's property and did not maintain records for the required seven-year period. Finally, with respect to the charge that he failed to protect a client's interests upon termination of the representation, respondent stated that his client "had already gone bankrupt and was in jail. He probably didn't need it anyway."

Respondent asserted that his clients were not harmed, that the title company eventually received recorded mortgages, and that, in light of the fact that his disciplinary record is tarnished only by a private reprimand, discipline no more severe than a reprimand was warranted. The presenter, too, urged the imposition of a reprimand.

The DEC found that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.15(a), and RPC 1.16(d). The DEC found the RPC 1.1(a) violation by a vote of two to one. One member abstained from

¹ The attorney from First American stated at the hearing that the title insurance agency had never been notified that a closing had occurred and that the matter was resolved because the lender was able to obtain and record new mortgages from the borrowers.

voting on the lack of diligence violation. The DEC recommended a reprimand.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical was supported by clear and convincing evidence. We find no merit in respondent's argument that the title company should have notified him sooner that he had not completed the transactions. It was respondent's duty to ensure that all post-closing steps had been properly taken. He cannot avoid responsibility by placing on the title company - or anyone else - the burden of making him aware of his inaction. Undeniably, thus, respondent's failure to record the deeds and mortgages following the real estate transactions constituted a lack of diligence and gross neglect. Respondent was unable to explain his failure to record the documents. He admitted that he had no procedures to confirm that post-closing tasks, such as the recording of documents, had been accomplished. We find, thus, that respondent violated RPC 1.1(a) and RPC 1.3.

We also find that respondent violated RPC 1.15(a). Respondent admitted that he failed to safeguard his clients' documents and failed to maintain records of the real estate transactions for seven years.

Finally, we determine to dismiss the charged violation of RPC 1.16(d). Failure to protect a client's interests upon termination of the representation usually requires knowledge that, although the attorney no longer represents a client, further action is warranted, such as returning client files, filing a substitution of attorney, and so forth. Typically, despite this knowledge, the attorney fails or refuses to take action necessary to protect the client's interests. See, e.g., In re Bowman, 178 N.J. 25 (2003); In re Rosenthal, 177 N.J. 606 (2003); and In re Wonski, 177 N.J. 508 (2003). Here, respondent believed that the transactions had been properly completed and, four years later, learned that they had not. His failure to participate in the resolution of the matter constituted a continuation of the gross neglect and lack of diligence violations, not a separate violation of RPC 1.16(d).

One additional point warrants mention. Although there was evidence that respondent indicated his unwillingness to cooperate with the ethics investigation, he was not charged with a violation of RPC 8.1(b). Respondent denied refusing to cooperate, contending that he simply did not have information to assist in the investigation. He filed an answer to the complaint and participated in the hearing. We determine that no clear and

convincing evidence was presented to justify amending the complaint to charge a violation of RPC 8.1(b).

There remains the issue of the quantum of discipline. Respondent violated RPC 1.1(a), RPC 1.3, and RPC 1.15(a). Discipline for conduct similar to respondent's generally ranges from an admonition to a reprimand. See, e.g., In the Matter of Diane K. Murray, Docket No. DRB 98-342 (September 26, 2000) (admonition for failure to record a deed and to obtain title insurance for fifteen months and two and a half years after the closing, respectively; the attorney also failed to reply to the client's numerous requests for information about the matter and to reconcile her trust account records in a timely fashion; the attorney violated RPC 1.1(a), RPC 1.3, RPC 1.4(a), and RPC 1.15(d)); In the Matter of Charles Deubel, III, Docket No. DRB 95-051 (May 16, 1995) (admonition for failure to record a deed for fifteen months after the closing of title, a violation of RPC 1.3); In the Matter of Laura P. Scott, Docket No. DRB 96-091 (May 2, 1996) (admonition for attorney who did not remit certain fees to the title company and to the mortgage company until six months after the closing; the attorney also failed to reply to her clients' numerous requests for information on potential unpaid closing costs and to deposit \$500 in cash into either her trust

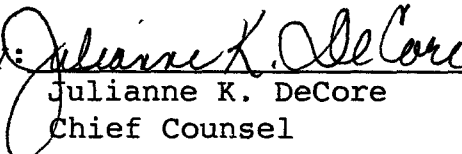
account or her business account, from which the closing proceeds would then be disbursed; finally, the attorney did not submit to her clients proof of \$97 in "reimbursement for costs/fees," and did not reimburse them for that amount; the attorney violated RPC 1.3, RPC 1.4(a), RPC 1.15(b), and RPC 1.15(d)); In re Jodha, 174 N.J. 407 (2002) (reprimand for attorney who did not promptly complete post-closing procedures; the attorney did not record the deed, pay the title insurance premium, pay the real estate taxes or refund escrow funds to his client until nine to twenty months after the closing; the attorney also failed to correct accounting deficiencies noted during a 1998 random audit by the OAE); In re Mandle, Jr., 167 N.J. 609 (2001) (reprimand for attorney who, while practicing law under the supervision of a proctor, failed to represent a client diligently by not recording a deed and mortgage for five months after the closing and not properly disbursing the closing funds, instead allowing them to remain stagnant in his trust account; the attorney also failed to cooperate with the investigation of the ethics matter; the attorney had received two prior reprimands for conduct that included gross neglect, pattern of neglect, lack of diligence, failure to cooperate with disciplinary authorities, and failure to communicate with a client).

We consider as an aggravating factor in this case respondent's cavalier attitude toward circumstances that he created. He failed to record the documents, yet, when the matter was brought to his attention, he took no steps to resolve the problem. Instead, the lender had to make arrangements to obtain and record substitute documents. In addition, respondent made no effort to locate his files after learning that his landlord had disposed of them only days earlier. In our view, respondent's failure to take any remedial action in this matter militates against an admonition.

We, thus, determine that a reprimand is the appropriate sanction. Vice-Chair William J. O'Shaughnessy, Esq. and Members Matthew P. Boylan, Esq. and Barbara F. Schwartz did not participate.

We further require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Chief Counsel

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

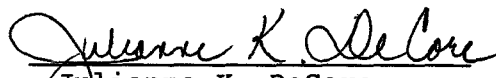
In the Matter of David T. Stoller
Docket No. DRB 04-318

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Disposition: Reprimand

Members	Reprimand	Admonition	Dismiss	Disqualified	Did not participate
Maudsley	X				
O'Shaughnessy					X
Boylan					X
Holmes	X				
Lolla	X				
Pashman	X				
Schwartz					X
Stanton	X				
Wissinger	X				
Total:	6				3


Julianne K. DeCore
Chief Counsel