SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 04-066 and 04-067
District Docket Nos. XIV-01-046E
and XIV-01-047E

IN THE MATTER OF	:
	:
MICHAEL R. SCINTO AND	:
RICHARD B. BECKER	:
	:
ATTORNEYS AT LAW	:

Decision

Argued: May 20, 2004

Decided: July 1, 2004

John McGill III appeared on behalf of the Office of Attorney Ethics.

Joseph A. Hayden appeared on behalf of respondent Scinto.

Michael B. Himmel appeared on behalf of respondent Becker.

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

This matter was before us based on a disciplinary stipulation between the Office of Attorney Ethics ("OAE") and respondents. Respondents admitted a violation of RPC 8.4(c)

(conduct involving dishonesty, fraud, deceit or misrepresentation).

In June 1998, Cathy C. Cardillo, Esq. sent a letter to David E. Johnson, Jr., the OAE Director, on behalf of her client, Trish Doneman (hereinafter "grievant"), alleging that respondents committed consumer fraud by filing false documents with the Hoboken Rent Control Office ("Rent Control Office"), in order to obtain illegal rents.[1] In June 1998, the matter was referred to the District VI Ethics Committee. That investigation resulted in a finding of a violation of RPC 8.4(c). By letter dated July 19, 1999, we rejected motions for discipline by consent recommending reprimands, and remanded and transferred the matters to the District XII Ethics Committee for a new investigation, the filing of a complaint, and a hearing. Our remand resulted in an investigative report that recommended reprimands for violations of RPC 3.3 and RPC 8.4(a), (c) and (d), and a Stipulation for Discipline By Consent.[2] By letter dated December 22, 2000, we rejected the stipulation, finding it almost identical to the stipulation previously rejected, and

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[1] One month earlier, Cardillo complained of respondents' conduct to their then-attorney, Thomas M. Marquet, Esq. Exhibit 2. In that letter, Cardillo accused Becker of sexually harassing grievant. The OAE's investigation uncovered insufficient evidence to support those allegations.

[2] The current stipulation mistakenly states that the findings were violations of RPC 3.3 and RPC 8.4(a), (b) and (d).

forwarded the matter to the OAE for a new investigation and, if appropriate, the filing of a new complaint, and a hearing. Thereafter, the matter was docketed for investigation by the OAE.

Respondents Scinto and Becker were admitted to the New Jersey bar in 1992. They are not currently engaged in the practice of law in New Jersey. Scinto presently lives in Virginia. According to the report of the New Jersey Lawyers' Fund for Client Protection, Becker has been retired since August 2003. Neither has a history of discipline.

In late 1995, Becker and Scinto formed a limited liability corporation known as 257 First Street, L.L.C. ("the corporation"), for the purpose of purchasing and managing a five-residential unit apartment building located at the same address in Hoboken, New Jersey. Becker's and Scinto's financial contributions in the corporation were equal. The 257 First Street property was the first building that respondents purchased in Hoboken and the only building owned by them that was subject to rent control. Although respondents had no specific knowledge of rent control rules when they purchased the building, they were aware that rent control rules existed, and that they governed the legal amount of rent the corporation

could charge its tenants. Becker owned one other small brownstone building at that time in Jersey City, New Jersey.

Becker and Scinto agreed to divide responsibilities for the operation of the 257 First Street property. Because Becker had some familiarity with property management, he handled that responsibility, including renovation and maintenance, and Scinto handled the technical aspects of the building, including rent calculations and rent control submissions. In September 1996, Scinto moved to Washington, D.C., and could not contribute meaningfully to the corporation from that distance.

In late 1996, the corporation spent in excess of $15,000 for the complete renovation of apartment 4 in the building. This renovation included a new bathroom, kitchen, floors, windows and electrical wiring, and fixtures. The OAE stipulated that respondents would testify that they believed they would have been entitled to a substantial rent increase for these improvements, had certain submissions been made to the Hoboken Division of Rent Leveling and Stabilization ("Rent Control Office"). Nevertheless, they knowingly determined to seek the rent increase through an inaccurate rent control submission, because the rent increase approval process required voluminous documentation, took a great deal of time, and involved at least one appearance in Hoboken.

During the relevant time, from December 1, 1996 through May 1, 1998, the amount of rent the corporation was legally permitted to charge for apartment 4 was governed by rent control guidelines administered by the Rent Control Office. On December 27, 1996, the corporation filed an amended Annual Registration Statement with the Rent Control Office noting that "R. Vazquez" lived in apartment 4, at a base rent of $664.34. At the time this document was filed, respondents knew that it was false, in that no one named Vazquez lived in apartment 4, and the amount of rent that the corporation was charging for apartment 4 was higher than the legal rent control amount. On January 1, 1997, the amount of rent legally permitted on apartment 4 was $664.00, based upon the corporation's prior submissions to the Rent Control Office.

On December 28, 1996, Becker, on behalf of the corporation and as tenant of the apartment, entered into a sublease agreement with grievant, which was to begin on February 1, 1997, at rental payments of $1,043 per month and a $1,043 security deposit. Becker, however, received only a $1,000 security deposit from grievant.[3]

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[3] By letter dated March 22, 2004, the OAE clarified that respondents' misconduct arose from their interaction with the Rent Control Office and the rent overcharges, and not from the sublease agreement.

At the time, respondents knew that the amount of rent charged to grievant exceeded the legal rent permitted by the Rent Control Office. "Without stipulating to the credibility of such testimony," the OAE stipulated that respondents would testify that, at the time, they believed the $1,043 monthly rental contained in the sublease agreement was below market by approximately $200 a month, and believed that the calculation of the $1,043 rental figure reasonably accounted for the capital improvements and furniture the corporation provided. Respondents stipulated that, at the time, they knew that the increased rent for the capital improvements had not been properly achieved and that, therefore, the sublease amounted to an overcharge of rent, which was wrong. "Without stipulating to the credibility of such testimony," the OAE stipulated that Becker would testify that, at the time, he held apartment 4 in his own name to retain rights in anticipation of his brother's occupying it in the future, and that his brother did, in fact, occupy the apartment for approximately a one-year period, after grievant's departure.

On February 1, 1998, grievant had been living in apartment 4 for one year and was still being charged a monthly rent of $1,043 by the corporation. On that date, however, Scinto, on behalf of the corporation, falsely advised the Rent Control

Office that someone named "Vazquez" was still living in apartment 4 at a monthly rent of $797, in its Annual Registration Statement. The OAE stipulated that, at the time the statement was filed, Becker did not have any actual knowledge of the February 1998 submission.

On January 26, 1998, the corporation filed a Request for Legal Rent Calculation with the Rental Control Office, representing that the tenant for apartment 4, "Vasquez," would be vacating the premises by February 28, 1998, and requesting a recalculation of the lawful rent based upon the alleged vacancy. At the time the request was filed, Scinto was aware of the filing and knew that grievant was the tenant in apartment 4 and that the information contained therein concerning "Vasquez" was false. The OAE stipulated that, at the time the request was filed, Becker did not have any actual knowledge of the submission.

Although Becker had no personal knowledge at the time, respondents stipulated that, on February 6, 1998, the Rent Control Office orally advised Scinto, on behalf of the corporation, that the corporation had miscalculated the proposed rent increase in its rent calculation request, and that the then permissible rent for the referenced unit was $680. On that same date, Scinto, on behalf of the corporation, formally withdrew

its written rent calculation request, prior to a formal response from the Rent Control Office, upon learning that subleasing furnished apartments was not permissible under applicable rent control laws, and that the Rent Control Office would use the submission to perform a legal rent calculation based on a tenant's vacating the premises. The corporation made no attempt, at that time, to either inform grievant of her rent overpayment or to refund the overpayment to her.

On February 10, 1998, the corporation mailed grievant a Notice to Quit for late payment of rent, and demanded possession of the subject premises on or before March 15, 1998. Grievant vacated apartment 4 on March 2, 1998. On March 31, 1998, after grievant had already moved out of the apartment, Scinto caused the corporation to mail her a "Security Deposit Accounting." According to the accounting, grievant still owed $1,776.05, after the liquidation of both her security deposit and the interest she earned on that deposit.[4] This $1,776.05 amount due included $150 owed for a "previous eviction," a $108 cleaning fee, and a rental payment assessment for the entire month of March 1998, despite Scinto's February 1998 notice to quit to grievant, directing her to vacate the premises by March 15, 1998. "Without stipulating to the credibility of such

[4] The stipulation mistakenly states that the amount due was $1,766.05.

testimony," the OAE stipulated that Scinto would testify that the corporation assessed grievant rent for the month of March because as of the first of the month, she was still in possession of the premises, and had not advised the corporation in advance that she would be vacating the premises.

In March 1998, the corporation was advised that grievant had contacted the Rent Control Office and asked that a legal rent calculation be performed in connection with apartment 4. In April 1998, the Rent Control Office determined that, during the course of grievant's tenancy, she had overpaid the corporation $5,012.

Prior to the filing of Cardillo's June 1998 grievance, Scinto and Becker made restitution to grievant by refunding her the full amount of the calculated rental overcharge, plus damages and legal fees. In addition, the stipulation noted that respondents cooperated fully throughout the OAE's investigation of this matter.

Respondents admitted that, by filing or allowing to be filed false statements to the Rent Control Office, they violated RPC 8.4(c)(conduct involving dishonesty, fraud, deceit or misrepresentation). Respondents are aware that the OAE recommends that a reprimand is the appropriate disciplinary sanction for their misconduct, pursuant to In re Sarsano, 153

N.J. 364 (1998) (reprimand where the attorney prepared two different RESPA forms to mislead a lending institution); In re Ford, 152 N.J. 465 (1998) (reprimand where the attorney accepted unemployment benefits while fully employed); In re Giusti, 147 N.J. 265 (1997) (reprimand where the attorney forged the signature of a client and of a notary, while using the notary's seal); In re Hankin, 146 N.J. 525 (1996) (reprimand where the attorney issued to the purchaser of a boat from the attorney's family business a receipt showing an incorrect purchase price); and In re Doig, 134 N.J. 118 (1993) (reprimand where the attorney engaged in a conflict of interest in a real estate matter, altered a deed after closing, failed to inform the co-owner and the bank of her action and misrepresented the reason for the inclusion of the additional name on the deed).

Upon a de novo review of the record, we find that the stipulated facts sufficiently establish that respondents' conduct was unethical.

Respondents engaged in an ongoing pattern of deceit to collect a rental payment higher than that to which they were legally entitled. Despite their belief, correct or not, that they were entitled to the higher payment, they did not go about obtaining that payment through proper channels, apparently because the required process was cumbersome and time-consuming.

In addition, respondents acted for their own self-interest, and not for the interest of a client.

Suspensions have been imposed in cases where attorneys acted dishonestly to further their own ends or those of a client. See In re Forrest, 158 N.J. 428 (1999) (six-month suspension where the attorney misled the court and an arbitrator by failing to disclose the death of his client); In re Solvibile, 156 N.J. 321 (1998) (six-month suspension where the attorney enlisted the help of a friend employed by the post office to cover up the fact that she sent her application for the bar examination after the deadline); In re Fink, 141 N.J. 231 (1995) (six-month suspension where the attorney provided false information in five real estate closings, took an improper jurat, and provided false information to a prosecutor); and In re Kernan, 118 N.J. 361 (1990) (three-month suspension where the attorney failed to advise the court of his fraudulent transfer of real estate while acting pro se in his own divorce proceeding).

Here, respondents sought to circumvent rent control procedures for their own expediency and convenience in achieving their own ends. Like the attorney in Solvibile, respondents determined that the rules did not apply to them because they

were problematic. The specter of an attorney's acting in that fashion harms the public's perception of the legal profession.

This is not to say that there are no mitigating factors - there are several. Counsel for both respondents filed briefs agreeing that a reprimand is the appropriate measure of discipline and setting out a number of mitigating factors. Specifically, counsel pointed to: (1) respondents' belief that the rent increase would have been permitted if they had followed the appropriate procedure; (2) respondents' refund to grievant of the overcharge, plus legal fees and damages; (3) respondents' unblemished records and withdrawal from practice while this matter was pending; (4) the passage of time since the misconduct; (5) respondents' cooperation with the OAE; (6) the unlikelihood that respondents will repeat their offenses; and (7) the fact that the misconduct did not involve the practice of law.

It is our recognition of these mitigating factors – most importantly the passage of time – that led us to conclude that a reprimand is sufficient discipline for respondents' infractions. "In this case, the public interest in proper and prompt discipline is necessarily and irretrievably diluted by the passage of time." In re Verdiramo, 96 N.J. 183, 187 (1984).

One member would impose a three-month suspension. One member did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Michael R. Scinto and Richard B. Becker
Docket Nos. DRB 04-066 and DRB 04-067

Argued: May 20, 2004

Decided: July 1, 2004

Disposition: Reprimand

Members	*Disbar*	*Three-month Suspension*	*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:		1	7				1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel