SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 00-322 and 00-323

IN THE MATTER OF

STEPHEN H. ROSEN

AN ATTORNEY AT LAW

Decision

Argued: March 15, 2001

Decided: August 6, 2001

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

C. Robert Sarcone appeared on behalf of respondent.

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

These matters were before us based on recommendations for discipline filed by Special Master Cynthia A. Cappell. The formal complaints charged respondent with violations of *RPC* 1.1(a) and (b) (gross neglect and pattern of neglect), *RPC* 1.3 (lack of diligence), *RPC* 1.5(a) (unreasonable fee), *RPC* 1.15(a) (failure to safekeep property), *RPC*

diligence), *RPC* 1.5(a) (unreasonable fee), *RPC* 1.15(a) (failure to safekeep property), *RPC* 4.1(a)(1) (false statement of a material fact to a third party) and *RPC* 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) (DRB 00-322, the *Calcagno* matter) and *RPC* 1.1(a), *RPC* 1.3, *RPC* 1.4(a) (failure to communicate with client), *RPC* 1.16(d) (failure to protect client's interests upon termination of representation), *RPC* 3.4(d) (failure to make reasonably diligent efforts to comply with discovery requests), *RPC* 4.1(a)(1) (truthfulness in statements to others) and *RPC* 8.4(c) (DRB 00-323, the *DeRosa* matter).

Respondent was admitted to the New Jersey bar in 1982. In 1995 he received a reprimand for lack of diligence, failure to communicate with client and conflict of interest violations. *In re Rosen*, 139 *N.J.* 387 (1995). In 1996, he was admonished for improperly affixing his jurat on closing documents and failing to cooperate with ethics authorities. *In the Matter of Stephen H. Rosen*, DRB No. 96-070 (1996).

The OAE and respondent entered into a 206-paragraph stipulation of facts in these matters. Respondent contested eight of the proposed allegations. The remaining evidence was presented by way of testimony and documentation. Although the grievances were filed in 1990 and 1992, the investigation and hearing were delayed due to a backlog of grievances filed with the District VC Ethics Committee. The OAE ultimately took responsibility for the investigation and prosecution of these matters.

The Calcagno Matter –District Docket No. XIV-95-108E, DRB 00-322

This matter involves three loan transactions in which respondent represented the lender, an individual. Although the record raises the suspicion that there was some type of scheme in which attorneys and mortgage brokers took advantage of borrowers and lenders (in fact, one of the parties in these transactions was in jail at the time of the ethics hearing), the record does not support a finding that respondent participated in such activities. Indeed, in its brief to the special master, the OAE stated "[w]e do not claim that Mr. Rosen planned or participated in what went wrong here -- only that he carelessly facilitated it through his lack of diligence."

Salvatore Calcagno, the grievant in this case, retired from the construction business and began another enterprise in which he loaned money to corporations, using funds borrowed from the Bank of Sicily. Calcagno's daughter, Rosalie Calcagno Lopez,[1] believed that Calcagno did not understand many of the transactions in which he participated. Lopez testified that her father, an immigrant with a third-grade education, did business by a "handshake" and was very trusting. Because Lopez believed that her father was dealing with untrustworthy individuals who could easily take advantage of him, Lopez became involved

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[1] Calcagno, who was seventy-six years old and suffering from Parkinson's disease at the time of the ethics hearing, was not able to testify.

in Calcagno's business. According to Lopez, despite her concerns, Calcagno believed that he would be protected by his attorney.

Calcagno owned an office building in Brooklyn, New York, where he maintained an office and leased office space to others, including Frank Satturo, a mortgage broker doing business as Liberty Capital, and Daniel Miller, Calcagno's New York attorney. Lopez stated that Satturo often engaged in transactions with Robert Koch, a New Jersey mortgage broker doing business as Mortgage City, and that either Koch or Satturo had referred Calcagno to respondent because Miller was not licensed to practice law in New Jersey. Lopez believed that Satturo and Koch lacked integrity and that they were taking advantage of borrowers who were in dire financial straits and of lenders as well, such as her father. Lopez testified that respondent became involved in the transactions when either Satturo or Koch introduced him to her father. She characterized the group as a "network," noting that the attorneys and brokers worked very closely together and always used the same appraisers and title insurance companies.

According to Lopez, although she confronted respondent with her concerns, he did not answer her specific questions, counseling instead to stop worrying. Lopez stated that, during these conversations, respondent never denied that he represented Calcagno.

Lopez testified that, as a result of some of the loan transactions, Calcagno lost $2,000,000, which he repaid to the Bank of Sicily over a period of five to six years. The following transactions formed the basis for the *Calcagno* complaint:

I. The Ajax Transaction

Koch, the mortgage broker who operated Mortgage City, was also the owner and president of Ajax Funding Corporation ("Ajax"). Calcagno agreed to lend Ajax $330,000. On August 5, 1988 Koch signed a $330,000 note, individually and as president of Ajax. Koch's wife, Judith Lesko, also signed the note. The loan was secured by mortgages, all dated August 5, 1988, on three New Jersey properties located in Franklin Lakes, Normandy Beach and Wayne.

The closing of title on the Franklin Lakes property and the loan closing took place on the same day, August 5, 1988. Calcagno's loan was, thus, a purchase money mortgage. Respondent was present at the closings. Although at first respondent denied that he represented Calcagno, the lender in the transaction, at the ethics hearing respondent conceded that he had represented both Koch and Calcagno.[2]

The closing documents for the three properties contained numerous improprieties. Respondent's assistant, Sue Tauber, prepared the mortgage and the buyer's affidavit of title for the Franklin Lakes property. These documents were signed only by Koch and witnessed

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[2] Although ordinarily it is proper for an attorney to represent the buyer and, at the same time, be the reviewing attorney for the lending institution, here, Calcagno was making the loan as an individual. Accordingly, there is the specter of a conflict of interest. Because, however, respondent was not charged with a conflict of interest and the issue was not raised at the hearing, it would be inappropriate for us to make such a finding.

by respondent. Only Koch was listed on the affidavit of title as the owner of the property, even though his wife, Judith Lesko, was also buying the property. The affidavit did not contain any information about Koch's marital history.

The Normandy Beach property mortgage, also prepared by Tauber, bore Koch's and Lesko's signatures, witnessed by respondent. The acknowledgment, however, referred only to Koch. Although Koch and Lesko purported to be the owners of the property, Koch only held a leasehold interest, which he assigned to Calcagno on August 5, 1988, the date of the loan closing. The assignment indicated that it was to be returned to respondent after recording. Nevertheless, respondent did not record the assignment. Also, respondent prepared and witnessed the signatures on two affidavits of title, one executed by Koch and one by Lesko. The affidavits of title represented that Koch and Lesko were the only owners of the property and did not refer to their leasehold interest. The *Koch* affidavit did not contain any marital history information.

As to the Wayne property, Tauber prepared a mortgage listing Koch as its owner. Respondent witnessed and acknowledged Koch's signature on the mortgage. As it turned out, the Wayne property did not exist.

Respondent claimed that Koch had asked to attend the closings at the last minute, after the attorney who had agreed to represent him had become unavailable. Respondent added that, because the closing documents appeared incomplete, at closing he had obtained a compliance agreement from Koch, although not from Lesko, whereby Koch agreed to sign

any other documents that were required. Respondent also handwrote and signed the following statement:

> I, Stephen H. Rosen, have received the original checks copied below[3] to be held in escrow pending completion of the documentation for the closing on real property at 117 Jeanette Drive, Normandy Beach, N.J. and 530 Shirley Avenue Franklin Lakes, N.J. and 2134-40 Hamburg Turnpike, Wayne, N.J. this 5th day of August, 1988.

On Monday, August 8, 1988, respondent deposited the $297,000 loan proceeds into his trust account. Two days later, on August 10, 1988, he issued a $9,600 trust account check representing his fee for the *Ajax* closing and deposited the check in his business account. Before the deposit, his business account had a negative balance of $1,953.70. On or before August 10, 1988 respondent issued a $7,425 trust account check to Mortgage City (Koch's company) as a broker fee.

Although the stipulation recited that respondent's disbursements of his fee and the mortgage broker fee were unauthorized, respondent denied that allegation, as seen below. After presumably paying some outstanding bills and/or debts, respondent disbursed the balance of the escrow funds to Koch on August 17, 1988.

Respondent prepared a document which he called "statement of closing disbursements," showing the following deductions, among others, from the loan proceeds: (1) Daniel Miller, lender's review fee, $2,000; (2) respondent, attorney fee, $9,600; (3)

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[3] Although the checks totaled only $297,000, Calcagno withheld interest of $33,000 (ten percent of the loan).

Liberty Capital, lock-in fee, $7,425; and (4) Mortgage City Broker, broker fee, $7,425. None of these disbursements appeared on the HUD-1 settlement statement.

Commonwealth Land Title Insurance Company ("Commonwealth") issued a title binder indicating that it would insure title to the Franklin Lakes property upon execution of a deed transferring title to Koch and Lesko. The August 5, 1988 deed had transferred the property to Lesko only. Respondent did not prepare a corrected deed transferring title to Koch and Lesko. Subsequently, Commonwealth amended its title binder to indicate that it would insure Calcagno's interest in the property for $230,000, upon the execution of a mortgage by Lesko. Respondent did not prepare a mortgage for Lesko's signature.

Respondent never obtained title insurance for any of the three properties securing the mortgages.

Respondent waited more than two months after the closing to send the *Franklin Lakes* deed and mortgage for recording. He sent only the *Normandy Beach* mortgage for recording. He did not record the deed or the lease assignment for the Normandy Beach property or the mortgage for the nonexistent Wayne property.

On October 3, 1988 John F. Coffey, an attorney retained by Calcagno, obtained a corrected mortgage for the Franklin Lakes property signed by Koch and Lesko.[4] Coffey filed

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[4] Coffey testified at the ethics hearing that, after he contacted Koch to obtain signatures on corrected documents, Koch appeared at his office with a woman identified as Lesko. When Coffey became suspicious about the woman's identity, she left. At it turned out, she was an imposter. Coffey later located Lesko and obtained her signature on the necessary documents.

the corrected mortgage on October 17, 1988. When Koch and Lesko defaulted on the note, on March 15, 1990 Coffey filed a foreclosure complaint on Calcagno's behalf against Koch, Lesko, Ajax and numerous other defendants. It appears from a certification of proof, filed by Calcagno in the foreclosure action, that Koch and Lesko never paid any of the sums due under the note. According to the certification, Koch and Lesko owed Calcagno $424,237.17. In lieu of foreclosure, Koch and Lesko transferred the Franklin Lakes property to Calcagno, who sold it on March 26, 1992 for $185,000.

At the ethics hearing, respondent testified that Koch was in jail.

The March 2, 1998 complaint charged respondent with the following violations with respect to the *Ajax* transaction: *RPC* 1.1(a) (gross neglect), *RPC* 1.3 (lack of diligence), *RPC* 1.5(a) (unreasonable fee) and *RPC* 1.15(a) (failure to safekeep property).

For his part, respondent contended that he reluctantly had agreed to represent Koch, who had appeared at his office in an agitated state on August 5, 1988, explaining that his attorney was unable to attend the real estate closing. Koch was very concerned that, if the closing did not take place that day, he would lose his deposit due to the "time of the essence" clause in the contract. Respondent relied on information supplied by Koch to prepare for the closing. Respondent's assistant, Tauber, drafted standard closing documents, based on Koch's representations. Respondent announced at the closing that he would conduct an "escrow closing" until the funds were received and all documents were in order and/or signed.

As noted earlier, at first respondent adamantly denied that he also represented Calcagno at the closing, contending that Daniel Miller, as Calcagno's attorney, received $2,000 for his involvement in the transaction. According to respondent, before the *Ajax* transaction, he attended a meeting with Calcagno, Miller, Satturo and possibly Koch, in which it was made clear that Miller represented Calcagno and that respondent would be representing individuals referred to him by Satturo and Koch, as mortgage brokers. It was agreed that Satturo and Koch would send referrals to respondent for New Jersey transactions.

During respondent's cross-examination, however, the presenter showed him Exhibit PC-28, a letter handwritten by respondent to Koch's attorney on August 5, 1988, the day of the closing:

> This is to notify you that I represent the lender Salvatore Calcagno on behalf of your client Robert Koch. With your permission and that of Robert Koch I will continue the closing of title on the property at 530 Shirley Ave., Franklin Lakes N.J. and bring the matter to completion.

Upon reviewing Exhibit PC-28, respondent stated that "I'm willing to admit that under those papers that I have, that I apparently did represent the grievant as an escrow agent. And I had not recalled that exhibit . . . . " 3T51.[5]

Respondent stated that, although he intended to return the file to Koch's attorney after the closing, the attorney refused to accept it. Respondent also stated that, during the escrow period, Koch told him that the Wayne property was owned by his wife's relatives and that

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[5] 3T refers to the transcript of respondent's testimony before the special master on October 29, 1999.

there was more than enough equity in the two remaining properties to secure the loan. According to respondent, Miller then orally authorized him to complete the transaction based on the two remaining properties and to disburse fees to the two mortgage brokers, Mortgage City (Koch's company) and Liberty Capital (Satturo's company). Respondent proceeded to complete the closing based on Miller's oral instructions, using the Franklin Lakes and Normandy Beach properties as security for Calcagno's loan. Respondent testified that he was unable to obtain corrected documents because Koch and Lesko were experiencing marital conflicts and would not cooperate with his requests to sign documents.

Respondent stated that, when he went to the closing, he anticipated that his fee would be "a few hundred dollars." After the complexity of the transaction became known, respondent told Miller that his fee would be $10,000:

> I told him I'm not going to cut $7,250 to Satturo and $7,250[6] to Mortgage City, which we happen to know, at this point in time, is Robert Koch. Cut all these fees to everybody including you, and what am I supposed to do, hope you're going to pay me for a lot of work that I have to do to clean this up. [3T37-38]

Respondent later agreed to reduce his fee from $10,000 to $9,600.

During the ethics investigation, respondent produced two letters, dated August 10, 1988 and August 16, 1988, respectively, that he allegedly sent to Daniel Miller. In each letter, respondent confirmed conversations that he allegedly had with Miller about the *Ajax*

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[6] Those fees were actually $7,425.

transaction. At a December 17, 1996 transcribed interview, the OAE investigator questioned respondent about the fact that he had ordered the letterhead used on these August 1988 letters on July 17, 1989, as shown by the records of Allstate Legal Supply Company, almost one year after they had allegedly been written. Moreover, Miller denied to the investigator that he had received those letters. Although the investigator suggested to respondent that he had fabricated the letters, the complaint did not charge respondent with such wrongdoing.

At the OAE interview, respondent denied fabricating the letters. Although he conceded that the letters "looked false," he insisted that he recalled writing the letters to Miller. Respondent's explanation for his use, in 1988, of letterhead that he had not ordered until 1989 was that perhaps he had reprinted the letters from his computer after he had begun using the new letterhead.

II. The Satturo Transaction

On May 12, 1988 Calcagno bought property in Elizabeth, New Jersey, for $61,000, when foreclosure proceedings on the property were apparently imminent. Respondent prepared the deed and recorded it on July 16, 1988. On March 17, 1989, about ten months after Calcagno bought it, he sold the property to Paula Satturo, the former wife of Frank Satturo. As stated earlier, Frank Satturo was the mortgage broker who owned Liberty Capital and rented office space from Calcagno.

Respondent represented Calcagno in the sale to Paula Satturo, who had borrowed $83,200 from Emigrant Savings Bank to finance the purchase. The HUD-1 settlement statement contained a typed purchase price of $83,200, which was crossed out and replaced with a handwritten amount of $125,000. Although the HUD-1 settlement statement further indicated that Paula Satturo had paid a $26,000 deposit, it appears that no deposit had been paid. Respondent contested that portion of the stipulation indicating that he had been aware that there were no deposit monies and that the correct sale price was $83,200, not $125,000.

On July 9, 1991, Emigrant Savings Bank filed a writ of execution listing the amount owed as $95,153.55. On January 14, 1993 it sold the property for $15,000.

For his part, respondent claimed that, after Calcagno bought the property, he contacted respondent and asked him to attend a meeting at a law firm in Staten Island. When respondent arrived, the "meeting" turned out to be the real estate closing between Calcagno and Paula Satturo. After Frank Satturo asked respondent to represent him[7], respondent declined, citing a potential conflict of interest. Respondent reasoned that the bank's attorney, who had prepared all of the closing documents, was also representing Frank Satturo. Respondent stated that he agreed to represent Calcagno in the transaction.

The complaint charged respondent with violations of *RPC* 4.1(a)(1) (false statement of material fact to a third person) and *RPC* 8.4(c) (conduct involving dishonesty, fraud,

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[7] Because Paula Satturo was buying the property in her name only, it is unclear why Frank Satturo needed representation.

deceit or misrepresentation) for misrepresenting the purchase price of the property and failing to disclose that no deposit had been made.

III. The Lee Transaction

On June 17, 1987 Hung Suen Lee gave Citicorp Homeowners, Inc. ("Citicorp") a first mortgage on property located in Maplewood, New Jersey. Lee was the president of Gily Co., Inc. ("Gily"). Calcagno agreed to lend Gily $50,000, secured by a second mortgage on the Maplewood property. On September 2, 1988 Calcagno wired $50,000 to respondent's attorney trust account. Respondent, in turn, wired $42,827.09 of the funds to Gily on September 6, 1988. The "statement of closing disbursements" that respondent prepared contained the following items, among others: $2,500 to Liberty Capital (Satturo's company) for loan procurement, $2,500 to Granite Financial for brokerage fee, $500 to Daniel Miller for attorney review fee and $1,000 to respondent for his fee.

Respondent waited five weeks from the date of the loan closing to send the mortgage to be recorded. In the interim, on September 13, 1988, another mortgage was recorded in favor of Ping Wai Chow for $81,000, encumbering the same Maplewood property. As a result of the delay, Calcagno's mortgage became a third mortgage, instead of a second mortgage. During the OAE investigation, respondent was unable to explain the delay in recording the mortgage. Later, however, he denied that he had not been diligent in recording the mortgage, contending that he had submitted it for recording within thirty days, that the

Essex County Register was very slow and that Lee had committed fraud by obtaining another loan after he had signed an affidavit that he would not further encumber the property.

On June 30, 1989 Citicorp filed a foreclosure complaint against Lee and all holders of interests in the Maplewood property, including Calcagno. Although the record does not indicate the outcome of that proceeding, it is presumed that Calcagno's security interest in the property was extinguished.

The complaint charged respondent with violations of *RPC* 1.3 (lack of diligence) and *RPC* 1.1(b) (pattern of neglect).

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Respondent offered the following mitigating factors. He testified that in May 1988, several months before the above transactions, his father passed away after a long illness. In July 1988 respondent suffered a collapsed lung. He was hospitalized in March 1989 for eleven days with lung and pancreas problems, prompting him to close his office on October 1, 1989. After a year, he practiced law with another attorney on a part-time basis for approximately two years. Although respondent disclosed that Calcagno had sued him for malpractice, the record does not reveal the outcome of that litigation.

Respondent pointed out that, to a large extent, he had relied on Daniel Miller, whom he viewed as deeply involved in Calcagno's transactions. Although respondent conceded that

he should have been more careful in these transactions, that he used bad judgment, that he was guilty of neglect and pattern of neglect and that his fee may have been unreasonable, he contended that he did not knowingly participate in a fraudulent scheme. As mentioned above, the OAE shared this view.

The De Rosa Matter - District Docket No. XIV-95-1109E, DRB 00-323

In this matter, respondent was retained to represent an estate in which the decedent's family alleged that the decedent's partner had committed fraud and stolen assets. The family contended that respondent grossly neglected the estate, resulting in substantial economic harm to them; failed to keep them informed about the status of the matter; and made several misrepresentations, including failing to inform them of foreclosure proceedings that had been filed against them.

On January 22, 1987 Regina DeRosa retained respondent to represent her in connection with the estate of her husband, Matthew DeRosa, Sr., who had died on June 21, 1985. Specifically, Regina asked respondent to recover some estate assets that, she believed, had been taken through fraud by her husband's cousin. Regina, respondent and Regina's son, Fiore, signed a retainer agreement on that date. The deceased was the father of Regina Greco (the grievant), Fiore, Matthew DeRosa, Jr. and Lucia Drayton. The fee agreement provided that respondent would receive a retainer of $750 plus the greater of either a $50 hourly rate or thirty percent of a recovery.

According to the DeRosas, they informed respondent that the deceased and his cousin, Joseph Monica, had been partners in two corporations, Mon-Rose Corporation ("Mon-Rose") and Jo-Matt Corporation ("Jo-Matt") and that Monica had defrauded the deceased and stolen the assets of the business, primarily three pieces of real estate. Respondent, in turn, denied being informed of the partnership and the fraud, insisting that Regina had retained him only to determine the extent of the assets of the estate. Respondent's notes from the January 22, 1987 meeting indicate that the deceased and Monica were partners in the ownership of real properties and listed the three properties owned by the corporations, as well as the names of the corporations.

Fiore stated that, before retaining respondent, he went to the Hall of Records in Essex County to research the deeds and other property records. He discovered that property that had previously been in his father's name was now in Monica's name. He also learned that one of the deeds had been signed by Nat Chait, who was deceased at the time of the execution of the deed. Fiore stated that he gave respondent a copy of the deeds at his first meeting with him. Fiore testified that, after his father had developed a heart condition, he had asked Monica to help him in his business, comprised of buying and renting real estate and operating a tavern. Fiore stated that his father and Monica had eventually become partners in the operation of the real estate business previously owned individually by his father. According to Fiore, shortly after his father's death Monica offered Regina a car, in exchange for her

husband's interest in the properties. Until December 1987, Regina had been receiving income in the form of car lease payments by the real estate business.

On April 14, 1987 respondent ordered a grantor/grantee search from Lawyer's Title Insurance Corporation on the three properties owned by Jo-Matt and Mon-Rose. The search revealed that all of the properties had been transferred to Monica. Two of the transfers took place three days before DeRosa Sr's death. The chain of title for one of the properties showed a deed misspelling DeRosa Jr's typed name and his signature. The latter had been fixed with correction fluid. The chain of title also included a quitclaim deed from Regina DeRosa to DeRosa Jr. Respondent should have been alerted to a discrepancy because Regina was DeRosa Jr's mother and would not ordinarily by required to execute a deed to clear title for her son. Moreover, in October 1988 respondent discovered that Nathan Maxwell, who had been listed as the preparer and witness on several of the deeds, was not a licensed attorney. Respondent also learned that Nat Chait's death predated deeds that Chait purportedly signed, transferring his interest in those properties.

Despite respondent's knowledge of all of these improprieties, he did not file a complaint against Monica until June 15, 1990, almost three and one-half years after he had been retained. Respondent did not file a notice of *lis pendens* for another three months.

Although respondent contended that he did not have sufficient proof of the DeRosas' interest in the corporations to file the complaint earlier, the record reveals that he had more than enough documentation showing their interest. Among other proofs were copies of the

November 22, 1982 certificate of incorporation of Jo-Matt, stating that DeRosa Sr. and Monica were shareholders; a November 22, 1982 agreement not to encumber or convey one of the properties, also stating that DeRosa Sr. and Monica were shareholders; the September 9, 1983 certificate of incorporation of Mon-Rose, stating that DeRosa Sr. and Monica were officers, incorporators and members of the Board of Directors; a November 8, 1983 receipt of tenants' security deposit and agreement to indemnify sellers, signed by DeRosa Sr. and Monica; and checks drawn on a Mon-Rose bank account signed by DeRosa Sr. and Monica, as well as a check issued to both of them. Because the checks were signed by both DeRosa Sr. and Monica, it is likely that they were joint signatories on Mon-Rose's bank account. In addition to the foregoing documents, the names of the corporations themselves suggest that they were a combination of Joseph Monica's and Matthew DeRosa's names.

Among other documents that were not in respondent's file, but were available to him, was a November 8, 1983 mortgage note signed by Mon-Rose, DeRosa Sr. and Monica. Unless DeRosa Sr. was a shareholder in Mon-Rose, it is unlikely that he would have agreed to be personally liable for the corporation's debts.

On October 12, 1988 respondent, Regina, Fiore, DeRosa Jr. and Douglas Mautner, an attorney hired by respondent to assist him in the matter, met with H. Rutherford Livengood of the Essex County prosecutor's office to discuss Monica's alleged fraud against the estate. Livengood agreed to investigate the matter. Although in September 1989 the prosecutor's office dismissed the investigation without filing any charges, respondent never informed

Regina or any of the other DeRosas of the dismissal. The September 14, 1989 final report issued by the prosecutor's office cited a statement by Regina that her husband was not incapacitated when he transferred one of the properties to Monica two months before his death and that he was aware of his actions. In addition, the report cited DeRosa Jr's acknowledgment that his father had asked him to sign the deed.

According to the DeRosas, years after the prosecutor's office closed the investigation, respondent continued to represent to them that Monica was being prosecuted and that they would collect damages as a result of the prosecution. Respondent contended that the prosecutor's office never informed him of the dismissal, conceding that he had not followed up to determine the status of the investigation. Although the record does not contradict respondent's contention that he never received notice of the dismissal, respondent failed to monitor the status of the investigation for years.

On October 21, 1988, nine days after respondent and the DeRosa family met with Livengood at the prosecutor's office, respondent sent Regina a letter enclosing a revised retainer agreement. Although the letter was sent only to Regina, respondent requested that she, Fiore and DeRosa Jr. sign the agreement. The agreement was back-dated to January 22, 1987, increased the contingent fee from thirty percent to one-third and eliminated the hourly fee provision.

From June 1989 through April 1990, Mautner, who prepared the complaint, sent various drafts for respondent's review. On June 15, 1990, three and one-half years after

respondent was retained, he filed a civil complaint on behalf of the estate. The defendants named in the complaint were Mon-Rose, Jo-Matt, Monica, Eugine Paluzzi, Nathan Maxwell, John Doe and John Doe Corp., National Community Bank ("NCB"), Vision Mortgage Corp., Inc., Citibank N.A. and the Attorney General of the State of New Jersey. Maxwell's name had appeared as the preparer of several of the deeds conveying property from DeRosa Sr. to Monica or the corporations. Paluzzi was an accountant who had witnessed some of the property transfers. The financial institutions named in the complaint held mortgages against the properties.

On September 18, 1990 respondent filed a notice of *lis pendens* on the three properties. From January 22, 1987, when respondent was retained, up to the filing of the notice of *lis pendens*, Monica gave six mortgages on the properties, totaling $1,065,000[8]. In addition, one of the defendants, Paluzzi, died in or about May 1989, about two and one-half years after the DeRosas hired respondent and prior to the filing of the civil complaint.

As mentioned earlier, respondent contended that he could not file the complaint earlier because he did not have proof that the estate had any ownership interest in the corporations and because the outstanding judgments against DeRosa Sr. outweighed the value of the corporations. According to respondent, the sole basis for the litigation was DeRosa Jr.'s claim that he had never signed the deeds that bore his signature. As noted above, the

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[8] Monica had preciously given three mortgages, totaling $293,696, after DeRosa Sr.'s death and before the DeRosa family retained respondent.

prosecutor's office report contains a statement by DeRosa Jr. that he had signed at least one deed at his father's request.

Shortly after respondent filed the complaint, Monica's attorney contacted respondent and arranged to meet with him to "nip the matter in the bud." This attorney, who had compiled a file in connection with the criminal proceeding, believed that there was no merit to the lawsuit and made his file available to respondent at this meeting. He hoped to persuade respondent that the case was groundless and, thus, save his client litigation costs. According to the attorney, Monica was the sole shareholder of both corporations and the DeRosa family had no interest in or entitlement to the corporate assets. Despite this position by Monica, at the meeting he offered $30,000 to settle the litigation. The DeRosas contended that, notwithstanding respondent's representations to them that they would receive at least "six figures" from Monica, respondent attempted to pressure them to accept the $30,000 settlement offer, because the judgments against the estate would eliminate any equity the estate might have in the property. Respondent introduced into evidence a judgment search dated April 5, 1985, obtained before he began representing the DeRosas. That search revealed judgments in the amount of $35,000. Regina Greco, however, conservatively estimated that her father's interest in the corporations was worth $500,000.

The DeRosas complained to respondent that Monica's attorney had a conflict of interest because he had represented DeRosa Sr. years earlier. Respondent, however, took no action to remove him from the case. Although the record suggests that Monica's attorney

may have represented DeRosa Sr. or Mon-Rose and Jo-Matt, it is not clear whether a conflict existed.

Respondent testified that, based on the meeting with Monica's attorney and his review of the documents, including corporate tax returns, he concluded that Monica had been the sole shareholder of both corporations before DeRosa Sr.'s death. Respondent further concluded that DeRosa Sr. was destitute as a result of numerous judgments against him and that Monica was "doing his cousin a favor" by allowing him to run the tavern.

Respondent asserted that he explained to Regina that, because of the numerous judgments against her husband, the lawsuit would benefit only the creditors of the estate, instead of the estate.

Beginning in December 1990, the defendants in the litigation initiated discovery requests. Respondent did not comply with most of these requests and served only one of these - a January 30, 1992 request for production of documents sent to Vision Mortgage and Citibank. Although respondent disputed that this was the only discovery request that he made, he offered no proof to the contrary.

On December 12, 1990 Monica's attorney sent respondent a request for the production of documents and a notice to take the depositions of Regina and DeRosa Jr. On January 3, 1991 he send respondent interrogatories. On March 20, 1991 he complained to respondent that his discovery requests had been ignored and that, as a result, the depositions of Regina and DeRosa Jr. had to be rescheduled. DeRosa Jr.'s deposition was rescheduled several

times. On April 12, 1991 respondent sent to Monica's attorney copies of the documents mentioned in the complaint. He did not send the other documents requested or answers to interrogatories. Respondent was also very slow to provide discovery materials to counsel for NCB, one of the defendants named in the complaint against Monica. Although NCB served respondent with a request for production of documents on December 13, 1990 and interrogatories on January 4, 1991, respondent did not provide the requested materials until September 9, 1991.

On November 27, 1991, almost five years after respondent was hired by the DeRosas, a fire at one of the properties allegedly destroyed the corporate books and records of Jo-Matt and Mon-Rose. Respondent denied the DeRosas' claim that, well before the fire occurred, they had requested that he obtain the corporate records from the secretary of state. He claimed that he had received all of the information he needed through informal discovery from Monica's attorney. It was only after Mautner requested certified copies from the secretary of state - five years after Regina DeRosa retained respondent - that respondent reviewed the documents concerning the formation of the corporations.

According to Regina Greco, respondent claimed that, after the fire, he had a conversation with the insurance company in which he allegedly advised it not to pay any proceeds to Monica. Greco later learned that not only had there had been no insurance on the property, but also that the property had been sold two years earlier to the City of Orange for unpaid taxed.

On December 8, 1991 Regina DeRosa died.

Meanwhile, on June 4, 1991 Independence One Financial Services, Inc. ("Independence One") filed a foreclosure complaint on one of the properties formerly owned by DeRosa, Sr. against several defendants, including the *DeRosa* estate, Regina DeRosa and DeRosa Jr. On July 22, 1991 respondent executed an acknowledgment of service of the summons and complaint on behalf of the DeRosas. Although Mautner sent respondent a draft answer to Independence One's complaint, respondent never filed an answer.

On December 20, 1991 Independence One filed a request for the entry of default against several defendants, including the DeRosas. In a January 10, 1992 letter respondent asked Independence One's counsel to either extend the time to file an answer or sign a consent order setting aside a default. On March 24, 1992, Independence One's counsel send a letter to respondent complaining that he had not returned three telephone messages and had failed to amend the *DeRosa* complaint to include Independence One as a defendant, despite his promise to do so one month earlier.

The DeRosas subsequently obtained new counsel, Paul von Nessi, who sent respondent a June 29, 1992 letter, requesting the file and a signed substitution of attorney. In a June 30, 192 letter, von Nessi stated to Independence One's counsel that, to his knowledge, the summons and foreclosure complaint had never been served on the DeRosas. On July 7, 1992 respondent denied to von Nessi that he had acknowledged service of the Independence One foreclosure complaint and stated that the foreclosure action, as well as

another foreclosure action that had been filed by NCB, were "under control" because he had obtained extensions of time to file answers to the complaints. On July 8, 1992 von Nessi confirmed respondent's representation that he would return the substitution of attorney and deliver the file by July 9, 1992.

On July 10, 1992 Independence One's counsel sent von Nessi a copy of the acknowledgment of service that respondent had signed and advised von Nessi that a default, but not a default judgment, had been entered against the DeRosas.

On July 17, 1992 von Nessi filed a motion to compel respondent to release the file and to sign the substitution of attorney. On July 20, 1992 respondent sent his file to von Nessi, advising him that the substitution of attorney had been sent and requesting that he withdraw the motion to compel the turnover of the file. In the letter, respondent stated that it took longer than expected to return the file because he needed it to prepare a reply to the grievance that Regina Greco had filed against him. At the ethics hearing, however, respondent contended that he had not sent the file earlier because the DeRosas had not paid its copying costs.

On August 7, 1992 the court entered an order directing respondent to release the file and to provide a substitution of attorney to von Nessi. On August 11, 1992 von Nessi sent a copy of the order to respondent.

On July 31, 1992 the court entered a default judgment in favor of Independence One against several defendants, including the DeRosas. On August 14, 1992 the court granted von

Nessi's motion to vacate the default judgment and to permit the DeRosas to file an answer to the complaint. Von Nessi filed an answer on August 28, 1992. On September 17, 1993 Monica filed a Chapter 7 bankruptcy petition. Von Nessi's representation of the DeRosa family ended shortly thereafter. On July 18, 1994 the court entered a default judgment against the DeRosas in the foreclosure action.

Regina Greco testified that respondent never informed the DeRosa family about the Independence One foreclosure proceeding. She contended that, when she learned of the foreclosure from a tenant and confronted respondent, he advised her that he had the proceedings "halted." Respondent, in turn, claimed that he had advised Regina DeRosa about the litigation and that she had authorized him to accept service.

Also, on February 5, 1992, four months before the DeRosas replaced respondent as counsel, NCB, one of the defendants in the estate action, filed a foreclosure action against several defendants, including the DeRosas, concerning another of the properties formerly owned by DeRosa, Sr. One day earlier, NCB's counsel sent a letter to Monica's attorney, with a copy to respondent, about NCB's emergent application to appoint a rent receiver. On February 21, 1992 the court orally appointed a rent receiver, effective March 1, 1992. A final order was signed on March 3, 1992. The record does not reflect any action taken by respondent in connection with NCB's application.

On February 28, 1992 Monica's attorney filed an order to show cause to stay the order for a rent receiver and to permit Monica to continue to collect the rents. On March 6, 1992

he sent a copy of the order to show cause to respondent. The court denied his request. According to the grievance, although the DeRosas had urged respondent to file a motion to appoint the sheriff's office to receive rents from the income-producing buildings, respondent never filed such a motion.

The DeRosas also claimed that they had asked respondent to obtain appraisals of the corporate properties. Respondent failed to do so, claiming that it would have been premature to obtain property appraisals without establishing that the DeRosas had any interest in those properties. Yet, respondent also claimed that the litigation would not be fruitful for the DeRosas because of the many liens against the property. The number of liens against the properties could not have been meaningful unless appraisals were conducted to determine the value of the properties.

Regina Greco testified that respondent also never informed the family about the NCB foreclosure action or Monica's attorney's application to stay the order for a rent receiver. She added that, when she confronted respondent about the foreclosure, he advised her the "everything was secure" and that he would appear before a judge to stop the foreclosure.

On June 23, 1992, NCB's counsel sent respondent a letter complaining that, two weeks earlier, respondent had agreed to sign an acknowledgment of service on his clients' behalf, but had failed to do so. Shortly thereafter, von Nessi assumed representation of the DeRosas. He filed an answer to the foreclosure complaint on November 18, 1992. The record does not reveal the outcome of the NCB foreclosure action.

On April 7, 1992 Fiore sent respondent a letter stating that, during the prior six weeks, he and others in his family had tried to contact him by telephone and mail, without success. He added that, over the past six years, he had urged respondent to contact the family more frequently, to no avail. Regina Greco, too, testified that, when the DeRosas tried to contact respondent, they would leave messages on his answering machine and would hear back from him "within a month." She also complained that, although respondent promised to send documents, the family received only the retainer agreements and a copy of the complaint. According to Fiore's April 7, 1992 letter, although in January 1992 the family had asked respondent for a copy of their files, they had not received it. Similarly, in an April 20, 1992 letter, DeRosa Jr. requested a copy of the file, including all pleadings and orders. Although both letters were sent by certified mail and were apparently received by respondent, he denied receiving them. Respondent released the file only after the DeRosas' new attorney, von Nessi, filed a motion to compel him to return the file. Respondent's defense was that he could not provide copies of the file without proof that Regina Greco was authorized to act as administratix or executrix of the mother's estate. Respondent, however, had prepared Regina DeRosa's will in which she named Regina Greco as executrix.

On May 28, 1992, about the same time that the DeRosa family was requesting copies of the file, the rescheduled depositions of DeRosa Jr. and Monica were to take place. Monica, his attorney, Regina Greco, respondent and Edward Dreskin, the attorney for Vision Mortgage Corp. and Citibank, appeared. DeRosa Jr. did not appear for his deposition. The

circumstances surrounding DeRosa Jr.'s failure to appear at the deposition were hotly contested. DeRosa Jr. testified that respondent never informed him of the deposition. Regina Greco testified that respondent had telephoned her at 8:45 p.m. on May 27, 1992, the evening before the deposition, advising her that she should attend Monica's deposition the next day and that DeRosa Jr. should not. According to Greco, respondent never notified her that DeRosa Jr.'s deposition was scheduled for the next day.

According to a statement by Dreskin, placed on the record on May 28, 1992, respondent reported that DeRosa Jr. had telephoned to inform him that he would be delayed. DeRosa Jr., however, denied having telephoned respondent, reiterating that he had received no notice of the deposition.

In his reply to the grievance, respondent told the OAE investigator that, on April 29, 1992, Mautner notified Regina Greco of DeRosa Jr.'s deposition. Mautner, however, stated otherwise.

It was respondent's testimony that he had contacted both Regina Greco and DeRosa Jr. about the depositions of Monica and DeRosa Jr. According to respondent, they both wanted to know what sort of questions would be asked at the deposition and, in particular, were concerned about questions on whether DeRosa Jr. had actually signed the deeds that he claimed were forged. Respondent also stated that, when he telephoned Greco the night before the deposition, she assured him that she had spoken with DeRosa Jr. and that they would both see him the following day. He denied telling Greco that DeRosa Jr. should not

appear. Respondent further testified that, while at the deposition, Regina Greco called him out of the room to tell him that DeRosa Jr. would be delayed.

On June 12, 1992 Dreskin filed a notice of motion to dismiss the complaint, based on DeRosa Jr.'s failure to appear at the deposition. On June 25, 1992 NCB's counsel filed a similar motion. DeRosa Jr.'s and Regina Greco's depositions were eventually taken on October 1, 1992, after they had retained von Nessi.

* * *

In the *Calcagno* matter, the special master determined that, in the *Ajax* transaction, respondent violated *RPC* 1.1(a), *RPC* 1.3, *RPC* 1.5(a) and *RPC* 1.15(a), by failing to properly prepare many of the closing documents, by failing to verify the *Koch/Lesko* interest in the Normandy Beach property and by failing to verify the existence of the Wayne property. The special master concluded that respondent failed to safekeep funds when, without his client's authorization, he disbursed the closing proceeds before the documentation had been completed. In finding that respondent's $9,600 fee for the *Ajax* transaction was excessive, the special master rejected respondent's claim that his fee was justified by the work he performed to "clean up title," noting that respondent never did "clean up title."

Although respondent was not charged with a violation of *RPC* 4.1(a)(1), the special master found that respondent's statements to the OAE that he had not represented Calcagno

were false and were contradicted by respondent's August 5, 1988 letter to Koch's attorney, in which he stated that he represented Calcagno. In addition, the special master found that the August 10 and August 16, 1988 letters to Daniel Miller were "obviously created after the fact," in violation of *RPC* 8.4(c).

With respect to the *Satturo* transaction, the special master found that, although the OAE presented documents with numerous discrepancies, particularly concerning the purchase price and the deposit, there was no clear and convincing evidence that respondent had been aware of these discrepancies. The special master, thus, found no violations in the *Satturo* transaction.

In the *Lee* transaction, the special master found that respondent's failure to record the mortgage for five weeks, during which time another creditor recorded a mortgage ahead of Calcagno's, constituted a lack of diligence.

The special master found that respondent's conduct in the above transactions, as well as in the *DeRosa* matter, discussed below, constituted a pattern of neglect.

In *DeRosa*, the special master found that, in representing Matthew DeRosa Sr.'s estate, respondent violated *RPC* 1.1(a), *RPC* 1.3, *RPC* 1.4(a), *RPC* 1.16(d), *RPC* 3.4(d), *RPC* 4.1(a)(1) and *RPC* 8.4(c).

The special master noted that respondent's lack of diligence resulted in substantial harm to the DeRosas: between the time that respondent was retained and the filing of the notice of *lis pendens*, Monica encumbered the properties with mortgages totaling more than

$1,000,000; Monica depleted those funds and then filed a bankruptcy petition; one of the defendants, Paluzzi, died eighteen months before the sheriff attempted to serve him with the complaint; a fire destroyed the corporate records that respondent had failed to obtain; and one of the parcels of property was sold in a tax sale.

The special master recommended a six-month suspension for the totality of respondent's actions.

* * *

The findings of the special master are supported by clear and convincing evidence. All of the transactions in the *Calcagno* matter involve members of what Lopez described as a real estate "network." Calcagno owned an office building in Brooklyn, in which he leased office space to an attorney, Daniel Miller, and a mortgage broker, Frank Satturo, who operated Liberty Capital. It appears that, when New Jersey property was the subject of loans, Robert Koch, a mortgage broker who operated Mortgage City, became involved. Respondent joined this "network" when, in May 1988, Satturo asked him to perform legal work in connection with the real estate loans.

Respondent's version of his involvement in the *Ajax* transaction was suspicious. Calcagno had agreed to lend Koch's corporation, Ajax, $330,000 secured by three New Jersey properties located in Franklin Lakes, Normandy Beach and Wayne. According to

respondent, Koch contacted him on August 5, 1988, the scheduled day of his purchase of the Franklin Lakes property. Koch was concerned that, because his attorney could not attend the closing, he would forfeit his deposit. There is no indication that, at this point, respondent had previously represented Koch.

We had difficulty understanding why respondent agreed to represent Koch under such urgent circumstances, when he allegedly had no file, no information and no prior relationship with Koch. Respondent owed no duty to Koch and should have declined to represent him. Instead, he relied on Koch for information and instructed his secretary to prepare the documents as best she could. As it turned out, his reliance on Koch was misplaced.

There were many irregularities surrounding the *Franklin Lakes* transaction. Despite the fact that Lesko's name appeared on the real estate contract, she did not sign the mortgage or the affidavit of title. Respondent witnessed Koch's signature on both of those documents. The affidavit of title listed only Koch as the buyer and did not contain any information about his marital history. The question arises as to whether Lesko actually appeared at the closing.

There were irregularities surrounding the *Normandy Beach* transaction as well. Although Koch executed a mortgage, he did not own the property outright. Instead, he had a leasehold interest, which he assigned to Calcagno on the day of the closing. Respondent did not record this assignment. Respondent prepared two affidavits of title for Koch and Lesko to execute. The affidavits recited that Koch and Lesko were the only owners of the property and made no mention of their leasehold interest. Again, the Koch affidavit omitted

information about his marital history. Because the acknowledgment on the mortgage mentioned only Koch, the possibility that Lesko was not present at the closing is raised again. Respondent's failure to verify the *Koch/Lesko* interest in the property, to record the documents and to ensure that the necessary documents were properly executed constituted gross neglect and a lack of diligence.

More egregiously, respondent prepared loan documents in connection with a property that did not exist, the Wayne property. Here, too, respondent's conduct smacked of gross neglect. His office prepared the mortgage only in Koch's name, omitting any reference to Lesko. Respondent witnessed and acknowledged Koch's signature. Respondent's failure to verify the existence of the property, particularly when a telephone call to the municipal tax assessor's office would have disclosed the fraud, violated *RPC* 1.1(a) and *RPC* 1.3.

Because the documents could not be completed at the closing, respondent signed a statement that he would hold the closing proceeds in escrow. Although Koch signed a compliance document agreeing to sign any further documents that were required, respondent did not obtain a compliance agreement from Lesko, a further indication that Lesko did not attend the closing.

According to respondent, although it was his intention to return the file to Koch's attorney after the closing, the attorney refused to accept it. Respondent's testimony in this regard was at odds with the escrow agreement that he had prepared at the closing, which stated "I will . . . bring the matter to completion."

Respondent, thus, undertook to complete the post-closing duties, such as obtaining title insurance. Commonwealth's title binder indicated that it required a deed transferring title to Koch and Lesko and a mortgage signed by Lesko before it would insure title. Respondent, however, did not prepare either document. In the end, he did not obtain title insurance for any of the properties securing Calcagno's mortgage. Similarly, some documents were recorded late and others not recorded at all.

Moreover, respondent failed to ensure that his client's loan was adequately secured. Respondent was aware at the closing that the documents were deficient. Yet, he permitted the closing to continue. Later, although he knew that the Wayne property did not exist and that Koch owned only a leasehold interest in the Normandy Beach property, he distributed the loan proceeds that he had agreed to escrow.

Calcagno eventually retained Coffey, who obtained a corrected mortgage for the Franklin Lakes property and filed a foreclosure complaint upon Koch and Lesko's default on the note. The certification alleged that Koch and Lesko owed Calcagno $424,237.17. After Calcagno received title to the property in lieu of foreclosure, he sold it for $185,000, sustaining a significant financial loss.

In addition to exhibiting gross neglect, respondent violated the escrow agreement to hold the loan proceeds intact until all documents were in order. Two days after depositing the loan proceeds in his trust account, respondent issued a check to himself for $9,600, depositing the check in his business account the same day. Before making that deposit,

respondent's business account contained a negative balance. Respondent also issued a $7,425 trust account check to Mortgage City, Koch's company, as a brokerage fee. Koch, thus, borrowed $297,000 from Calcagno and received a brokerage fee of $7,425 from the loan proceeds. Respondent contended that Miller had orally authorized these disbursements and that he had sent a confirming letter to Miller. Although Miller did not testify at the ethics hearing, he submitted a letter denying that he had authorized respondent to disburse the funds and denying that he had received the confirming letter[9]. Miller's consent, if indeed given, was not sufficient. Respondent had an independent duty to obtain Calcagno's consent directly, since he was acting as Calcagno's attorney in the transaction. Respondent, however, offered no defense that he had Calcagno's authorization to the release of the funds in escrow. Respondent, thus, breached the escrow agreement, in violation of *RPC* 1.15.

Moreover, respondent's $9,600 fee for the *Ajax* transaction was excessive. Although he stated that he initially anticipated that his fee would be several hundred dollars, he attributed his higher fee to the work involved in cleaning up the title. He claimed to have spent more than fifty hours on the matter. However, he took his fee only one week after the closing, before complying with the terms of the escrow agreement. Clearly, thus, he had not performed the work that allegedly would have justified a higher fee. In fact, he never cleared

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[9] When respondent was asked, at the ethics hearing, whether he had made any efforts to secure Miller's appearance at the hearing, respondent's counsel replied that Miller had been "reluctant to appear."

title. We find that, by charging such an excessive fee, respondent overreached Calcagno, in violation of *RPC* 1.5(a).

We are constrained to disagree, however, with the special master's finding that respondent violated *RPC* 4.1(a)(1), by misrepresenting to the OAE that he did not represent Calcagno, and *RPC* 8.4(c), by fabricating letters during the OAE's investigation. Because these charges were neither part of the complaint nor fully litigated at the ethics hearing, respondent did not have an opportunity to be heard on these issues. Accordingly, it would be unfair to find such violations.

In the *Satturo* transaction, respondent represented Calcagno in the sale of property to Paula Satturo, Frank Satturo's former wife. Paula Satturo had received a mortgage for $83,200 from Emigrant Savings Bank. The typed $83,200 purchase price on the HUD-1 settlement statement had been crossed out and replaced with the handwritten amount of $125,000. The HUD-1 statement also indicated that Paula Satturo had paid a $26,000 deposit. She defaulted on the mortgage, resulting in the entry of a $95,153.55 judgment against her. Emigrant Savings Bank sold the property for $15,000 at a substantial loss.

Respondent denied any knowledge that the deposit had not been paid or that the actual purchase price was $83,200, not $125,000. We find that, although the closing documents in the *Satturo* transaction contained discrepancies regarding the purchase price and the deposit, there is no clear and convincing evidence that respondent was aware of or participated in the

misrepresentation of the terms of the sale. The special master, thus, properly dismissed the charges in the *Satturo* matter.

With respect to the *Lee* transaction, respondent clearly displayed a lack of diligence by his failure to promptly record Calcagno's mortgage. Calcagno lent $50,000 to Lee's company (Gily), to be secured by a second mortgage on property located in Maplewood. The loan proceeds were disbursed to Gily on September 6, 1988. The closing statement showed disbursements of $2,500 for loan procurement to Liberty Capital, $2,500 for brokerage fee to Granite Financial, $500 to Miller for attorney review fee[10] and $1,000 for attorney fees to respondent. Once again, the attorneys and brokers profited from this loan transaction. Unfortunately, Calcagno did not because respondent waited five weeks to record the mortgage. By then, another creditor had recorded an $81,000 mortgage, which was superior in position to Calcagno's. Although respondent stipulated that he could not explain the reason for his delay in recording the mortgage, he later contended that he had submitted the mortgage for recording within thirty days and, therefore, timely. Respondent blamed the Essex County Register for being "slow" and blamed Lee for committing fraud by obtaining a loan in violation of an affidavit indicating that he would not further encumber the property. We find that, by delaying the recording of the mortgage, to his client's detriment, respondent violated *RPC* 1.3. We further find that the poor nature of respondent's services on

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10 The record does not reveal who Miller was representing.

Calcagno's behalf in these matters constituted a pattern of neglect, in violation of *RPC* 1.1(b).

In *DeRosa*, the findings of the special master are supported by clear and convincing evidence. It is unquestionable that, over a period of years, respondent neglected the *DeRosa* estate, resulting in harm to his clients. Respondent compounded this neglect and lack of diligence by engaging in other transgressions, including failure to turn over the file, failure to communicate with his client and failure to comply with discovery.

On January 22, 1987, the DeRosas retained respondent to represent the estate of DeRosa Sr. Although respondent claimed that he represented only Regina DeRosa, the retainer agreement was also signed by Fiore DeRosa. In addition, in October 1988, when respondent sent a revised agreement to Regina, he asked her to obtain the signatures of Fiore and DeRosa Jr. Respondent, thus, must have viewed other members of the DeRosa family as his clients. Respondent also denied that the DeRosas informed him about the corporations, the real property and the potential fraud that Monica had committed in conveying to himself property that had previously been owned by DeRosa Sr. or the corporations. Yet, respondent's notes from the January 22, 1987 meeting reflect his knowledge of the partnership between DeRosa and Monica and mention the names of the Mon-Rose and Jo-Matt Corporations, as well as the locations of the real property. In addition, Fiore testified that he gave respondent copies of deeds that he had previously obtained from the Essex

County Hall of Records. It is clear, therefore, that, at the initial meeting with the DeRosas, respondent had been informed about the potential fraudulent conveyances made by Monica.

After respondent ordered the grantor/grantee search of the three properties owned by the corporations, he should have noticed the irregularities in these real estate transfers. The search revealed that all of the properties had been transferred to Monica. Two of the transfers took place three days before DeRosa Sr.'s death. The chain of title for one of the properties showed a deed misspelling DeRosa Jr.'s typed name and his signature. The latter had been fixed with correction fluid. The chain of title also included a quitclaim deed from Regina to her son, a deed that would ordinarily be required only in a transfer from one spouse to another. Moreover, in October 1988 respondent discovered that Nathan Maxwell, who had been listed as the preparer and witness on several of the deeds, was not a licensed attorney. Respondent also learned that Nat Chait's death predated deeds that Chait purportedly signed, transferring his interest in those properties. Despite respondent's knowledge of all of these improprieties, he did not file the complaint against Monica until June 15, 1990, almost three and one-half years after he had been retained and one year after Mautner sent him the first draft of the complaint. Respondent did not file the notice of *lis pendens* for another three months.

In short, respondent had sufficient documentation of the DeRosas' interest in the corporations, well before he filed the complaint. As a result of his delay in filing the complaint, the DeRosas suffered financial harm. Between January 22, 1987, when the

DeRosas retained respondent, and September 18, 1990, when respondent filed the notice of *lis pendens*, Monica encumbered the properties with six mortgages totaling more than $1,000,000. Monica then depleted these funds and, on September 17, 1993, filed a bankruptcy petition. Respondent's neglect and lack of diligence permitted Monica to obtain the mortgages. Had respondent filed the complaint and notice of *lis pendens* earlier, he would have given notice to the world of the DeRosas' potential interest in the properties, thereby preventing Monica from obtaining the mortgages. In addition, his failure to promptly file the complaint prevented the DeRosas from recovering any damages from Eugene Paluzzi, a potential defendant who died in May 1989, almost two and one-half years after the DeRosas retained respondent.

The neglect and lack of diligence that respondent exhibited before he filed the complaint continued afterward. He did not request discovery from Monica's attorney, but instead relied on information that the attorney had provided informally. Respondent never requested production of the corporate records, which later were allegedly destroyed in a fire on November 27, 1991, almost four years after the DeRosas retained him. He failed to reply to numerous discovery requests made by his adversaries, resulting in two motions to dismiss the complaint. The record is replete with letters from other counsel documenting respondent's failure to comply with discovery, failure to meet the deadlines that he himself had set and failure to return telephone calls. Respondent also failed to propound discovery of his own, except for one request for the production of documents.

In addition, respondent displayed neglect and a lack of diligence with respect to the two foreclosure matters filed against the DeRosas, accepting service of the *Independence One* foreclosure summons and complaint, but never filing an answer. As a result, Independence One's counsel obtained a default against the DeRosas. Notwithstanding respondent's representation to Independence One's counsel that he would amend the complaint he had filed on the DeRosas' behalf to include Independence One as a defendant, he never did so.

Similarly, respondent did not file an answer in the *NCB* foreclosure complaint. Although he represented to NCB's counsel that he would acknowledge service on his client's behalf, he never did so. Finally, on November 18, 1992, von Nessi filed an answer for the DeRosas.

Clearly, thus, respondent violated *RPC* 1.1(a) and *RPC* 1.3 in these numerous instances. Moreover, throughout respondent's representation of the *DeRosa* estate, he failed to communicate with his clients. He did not keep them informed of his pre-complaint investigation. After he filed the complaint, he did not send copies of pleadings to his clients and sent them very little correspondence about the status of the litigation. In addition, he failed to inform DeRosa Jr. of a notice to appear for depositions and failed to advise the DeRosas of the two mortgage foreclosure complaints that were filed against them or of Monica's motion for an order to show cause to stay the appointment of a rent receiver. Finally, on April 17, 1992, Fiore sent respondent a letter documenting the family's numerous

attempts to contact him over the entire course of his representation and, specifically, during the prior six weeks. The letter also referred to respondent's failure to forward copies of the file that had been requested in early January. His failure to keep his clients informed about the status of the matters, thus, violated *RPC* 1.4(a).

Also, respondent's failure to release the *DeRosa* file until von Nessi filed a motion to compel its release violated *RPC* 1.16(d).

In addition, on several occasions, respondent failed to comply with discovery requests. As a result of respondent's inaction, the depositions of Regina DeRosa and DeRosa Jr. were rescheduled several times. Respondent, thus, repeatedly violated *RPC* 3.4(d), by not complying with numerous discovery requests.

Finally, although the DeRosas alleged that (1) they had not authorized respondent to accept service of process in the two foreclosure actions filed against them; (2) respondent had misrepresented the status of the foreclosure proceedings; and (3) respondent had never informed DeRosa Jr. of his deposition, the record did not establish these misrepresentations by clear and convincing evidence. We, therefore, dismissed the charges alleging that respondent violated *RPC* 4.1(a)(1) and *RPC* 8.4(c).

* * *

In sum, in three *Calcagno* matters, respondent displayed gross neglect and a lack of diligence, charged an unreasonable fee, breached an escrow agreement and engaged in a pattern of neglect. In *DeRosa*, respondent exhibited gross neglect and a lack of diligence over a six-year period, failed to communicate with his clients, failed to protect his clients' interest upon termination of the representation and failed to comply with discovery requests.

In mitigation, we considered the passage of time: respondent's actions occurred from 1987 through 1992. An aggravating factor is respondent's disciplinary history, however. He was reprimanded in 1995 for lack of diligence, failure to communicate and conflict of interest violations. In 1996 he was admonished for improperly affixing his jurat on closing documents and failing to cooperate with ethics authorities. Although the transgressions in the instant matter were committed before respondent was disciplined in those two matters, his disciplinary history demonstrates a pattern of disregarding the *Rules of Professional Conduct*. Moreover, respondent displayed no remorse in these matters, refusing to acknowledge any wrongdoing. In fact, in *DeRosa* he insisted that he had zealously investigated the DeRosas' claims and had performed diligent work. In addition, his clients suffered significant economic harm as a result of his actions

Similar misconduct has resulted in discipline ranging from a reprimand, *see, e.g., In re Muller*, 162 N.J. 121 (1999) (reprimand for gross neglect, lack of diligence, failure to communicate, and conduct involving dishonesty, fraud, deceit or misrepresentation; attorney had received a prior private reprimand) to a term of suspension. *See, e.g. In re Kanter*, 162

N.J. 118 (1999) (one-year suspension where attorney, in five matters, engaged in gross neglect and a pattern of neglect, displayed a lack of diligence and failed to communicate with his clients; in three of the matters he also failed to prepare a retainer agreement and to cooperate with the ethics authorities and in one matter he failed to expedite litigation); *In re Scharfetter*, 159 *N.J.* 518 (1999) (six-month suspension where attorney directed clients to sign incomplete documents at a real estate closing, failed to complete post-closing tasks, such as recording the deed and paying the realty transfer fee and failed to reply to his clients' attempts to contact him for more than one year; discipline was increased from three months to six months based on the default nature of the disciplinary matter); *In re Marra*, 149 *N.J.* 650 (1997) (three-month suspension where attorney engaged in gross neglect, failed to abide by a client's directions, displayed a lack of diligence and failed to communicate with a client in one matter; in another matter, the attorney engaged in a pattern of neglect, failed to communicate with a client and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; the attorney had previously received both a private and a public reprimand); *In re Whitefield*, 142 *N.J.* 480 (1995) (one-year suspension where attorney displayed gross neglect in one matter, removed fees from a client's funds without authorization in another matter and, in a third matter, engaged in gross neglect and a lack of diligence, failed to communicate with a client and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation).

Here, a six-member majority determined that respondent's actions fall in the category of three-month suspension cases, finding that, although respondent left many tasks incomplete, in some instances his conduct did not necessarily rise to the level of unethical conduct. Three members voted to impose a six-month suspended suspension and to require respondent to perform 250 hours of community service.

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

Dated: 8/16/01

By: _____
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Stephen H. Rosen
Docket No. DRB 00-322 and 00-323

Argued: March 15, 2001

Decided: August 6, 2001

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Six-month Suspension	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			X				
Peterson			X				
Boylan		X					
Brody		X					
Lolla		X					
Maudsley		X					
O'Shaughnessy			X				
Schwartz		X					
Wissinger		X					
Total:		6	3				

Robyn M. Hill
Chief Counsel