SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-328

IN THE MATTER OF

JEFFREY M. RIEDL

AN ATTORNEY AT LAW

Decision

Argued: November 20, 2003

Decided: February 18, 2004

Jeffrey A. Lester appeared on behalf of the District IIA Ethics Committee.

Respondent waived appearance for oral argument.

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

This matter was before us based on a recommendation for discipline by the District IIA Ethics Committee ("DEC").

The complaint alleged that respondent misrepresented the existence of prohibited secondary financing on a federal Housing and Urban Development Uniform Settlement Statement ("HUD-1").

Respondent was admitted to the New Jersey bar in 1973. On July 2, 2002, he received a reprimand for gross neglect, pattern of neglect, and lack of diligence, for failure to secure the discharge of mortgage in a real estate transaction. Respondent also violated RPC 5.3(b) by failing to properly monitor his paralegal in her preparation of

documents in four separate real estate transactions. The Court found that numerous errors contained in those documents could have been avoided if respondent had taken a more active role in their preparation and review, prior to the closings. Moreover, respondent allowed his paralegal to sign trust account checks, in violation of R. 1:21-6 (b) (1) and RPC 1.15(d). In re Riedl, 172 N.J. 646 (2002).

The complaint in the present matter alleged violations of RPC 4.1 (truthfulness in statements to others), and RPC 8.4(c) (misrepresentation) in a residential real estate transaction.

This matter arose out of a business relationship that respondent had with a group of individuals who rehabilitated dilapidated housing for resale across the state. Respondent acted as the settlement agent in many of the transactions. His neglect and sloppy office practices in those transactions was the subject of a prior disciplinary matter, as noted above. The matter now before us involves a single instance of failure to disclose the existence of secondary financing on closing documents in yet another transaction involving the same group of individuals.

In early 1999, respondent served as settlement agent for the Dime Savings Bank of New York ("Dime") in the purchase of residential real estate by the grievant, Gerald J. Koenig, from a Tanya Rice. The real estate closing for the property, which was located at 216 Peshine Avenue, Newark, New Jersey, took place on June 11, 1999.

The transaction was, at its origin, one of many that respondent had handled for Kevin Pianfetti. Pianfetti, a mortgage broker specializing in the acquisition and financing of distressed properties, typically identified properties in depressed condition for purchase, renovation and resale. An investor or accommodation buyer would usually

purchase the property with financing arranged by Pianfetti and sufficient to cover acquisition and rehabilitation. The property would then be sold and the original lenders repaid. Pianfetti's payment typically was the brokerage fee charged for facilitating the financing.

On June 18, 1998, Rice purchased the Peshine Avenue property from Stanley and Cynthia Cleveland, for $18,000. Pianfetti arranged for $93,000 from a private lender named Robert Benjamin, to cover both the purchase and renovation of the property for resale.

Almost a year later, upon the completion of renovations, Rice sold the property to Koenig for $120,000. Pianfetti arranged financing for a portion of the purchase price ($91,200), from the Dime, leaving a shortfall of $36,703. This time, the Dime acted as lender. The shortfall forms the basis of the ethics complaint.

In the Rice to Koenig transaction, the Dime agreed to loan Koenig the $91,200, subject to the condition that "no type of secondary financing to complete the loan settlement is permitted unless approved by the Dime in writing." Exhibit T.

Koenig testified at the DEC hearing that he paid the shortfall at the June 18, 1998, closing, furnishing respondent with a bank check in the amount of $40,000 for that purpose. Although requested to do so, Koenig could not produce any evidence of this aspect of the transaction. In fact, Koenig did not identify the bank upon which the check was allegedly drafted or furnish the DEC with any other information about it.

On the other hand, respondent testified that Koenig made up the shortfall by obtaining secondary financing from an individual named Peter Price. Respondent

produced a copy of both the Price mortgage and the mortgage note, which he had originally prepared and, subsequent to the closing, had recorded on June 15, 1999.

When confronted with a recorded copy of his mortgage to Price, Koenig admitted that the signatures were his, but testified that he was unaware that he had executed a mortgage and note in favor of Price at closing. He stated that he had signed a stack of papers that day, but did not bother to read them, because he trusted respondent. Koenig also confessed that, at the time, he was not new to the real estate investment scene, and had previously been involved in numerous other real estate transactions with the Pianfetti group.[1] Koenig further testified that he first learned of his mortgage to Price months later, when respondent sent him a dunning letter on Price's behalf. Finally, Koenig further alleged that respondent and Price had stolen the shortfall funds ($39,039) from him.

Pianfetti also testified at the DEC hearing. According to Pianfetti, he had arranged the financing for the Rice to Koenig transaction, but knew nothing about secondary financing to cover the shortfall. Pianfetti was shown a facsimile cover sheet from his office to respondent, dated June 11, 1999, which stated, "the second mortgage should be dated Tuesday next week." Pianfetti denied any knowledge of that document, and had no explanation for its presence in respondent's file.

With regard to the allegation of a misrepresentation in the HUD-1, respondent conceded that he had not reviewed all of the documents prior to the closing. Therefore, he was unaware, when acting as settlement agent, that Koenig had obtained a second mortgage. Respondent took that seemingly untenable position, despite the fact that his

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[1] Apparently, Koenig was unrepresented at the closing.

office had prepared those documents. Respondent admitted that, had he been more familiar with the details of the transaction, he would have known that the Dime had prohibited that very arrangement, which he had set into motion.

Respondent testified candidly about his lack of attention to the Pianfetti transactions, as he had in the earlier disciplinary matter. According to respondent, his paralegal, Regina McClurg,[2] prepared the documents for the Rice to Koenig closing. Respondent further stated that McClurg had over twenty years of real estate experience, and that he trusted her expertise implicitly. So much of the work was actually produced by McClurg, he stated, that he sometimes allowed her to conduct real estate closings in his absence. He was not absolutely certain, but believed, however, that in this instance, he had personally attended the closing and had disbursed the settlement funds himself.

Respondent also explained that he had acted primarily as the closing attorney in many Pianfetti deals, which Pianfetti had prearranged. According to respondent, in some instances, he did little more than lend his name to the documents at closing. Although he did not admit specific misconduct, respondent acknowledged that, in hindsight, it was a mistake for him to have done so, because he had the ultimate responsibility for the accuracy of the closing documents.

The DEC found Koenig's testimony not credible, noting that he was a sophisticated investor who had entered into real estate transactions with Pianfetti and his group many times. The panel concluded that Koenig was driven by greed and that he had executed a second mortgage and note to Price, which he sought to avoid at respondent's expense.

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[2] McClurg also appears in the record as "McClure."

The DEC also noted the complex interrelationships between the parties in the Pianfetti group, when reaching its conclusions. For example, Koenig's former wife had been respondent's secretary for five years. Upon her departure to work for Pianfetti, respondent became involved with the group. In addition, Koenig and Pianfetti were good friends, and had engineered numerous real estate transactions with financing from Robert Benjamin, the lender in Cleveland to Rice and his business associate, Peter Price, Koenig's lender and secondary mortgagee in Rice to Koenig.

The DEC also found Pianfetti not credible. In particular, the DEC did not believe his claimed ignorance about the existence of Koenig's second mortgage, citing his role as mastermind of the transaction and the fax from his office about the details of the Price mortgage.

The DEC found respondent guilty of violating RPC 4.1 and RPC 8.4(c). It recommended the imposition of a reprimand.[3]

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is supported by clear and convincing evidence.

We note at the outset that, in the investigation of the earlier disciplinary matter, for which respondent received a reprimand, he was required to divulge information about all matters involving the Pianfetti group or accommodation buyers. The within Cleveland to Rice and Rice to Koenig matters were not disclosed at that time. Therefore, the ethics

[3] The DEC also found a violation of RPC 5.4(c), although that RPC was not charged in the complaint.

authorities were unaware of their existence until now. There is no evidence, however, that respondent sought to hide these matters from the ethics authorities.

We found that, by respondent's omission of any reference to secondary financing in the Rice to Koenig HUD-1, he misrepresented the true financial picture of the transaction. That respondent's paralegal, McClurg, prepared the documents for closing, including the second mortgage and note, did not lend him cover. The only question was whether respondent failed to review the mortgage and loan documents before executing them as settlement agent, or knew of their existence and lied about them, first on the HUD-1 and, later, to the ethics authorities. We found that all of the evidence reflects that respondent was unaware, because of his lack of familiarity with the transaction, that Koenig had obtained additional financing from Price. Had respondent conducted a proper study of the documents, he would have seen that, in conjunction with the terms of the Dime's loan agreement, the Price loan was prohibited. He would also have been aware that the HUD-1 was silent in that regard.

As previously stated, the loan agreement required Koenig to certify that he had not obtained other financing without the Dime's written consent. A primary lender such as the Dime has a legitimate interest in knowing of the existence of additional financing because it alters the buyer's financial posture as he or she enters into the transaction. It affects the buyer's ability to pay the first mortgage loan. As such, it must be disclosed.

So, too, the primary lender relies on the settlement agent for the veracity of the facts contained in the HUD-1. Respondent admitted that he was careless in this regard. In fact, it is not certain that respondent actually attended the Rice to Koenig closing. Respondent weakly asserted that he had attended the closing, while Koenig claimed that

respondent was not in attendance that day. We also know, from respondent's prior ethics matter, that he had allowed McClurg to conduct some real estate closings in his absence. In those instances, he signed documents after settlement had already taken place. Notwithstanding respondent's lukewarm assertion that he presided over the Rice to Koenig closing, it is possible that he did not.

We have long held that an attorney who creates or certifies false documents in a real estate transaction may be found guilty of misrepresentation, with or without establishing the intent to deceive. Therefore, when respondent attested to the settlement statement as "a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of the transaction," he made a misrepresentation, in violation of RPC 8.4(c).[4]

With respect to the DEC finding that respondent allowed Pianfetti to control his professional judgment, in violation of RPC 5.4(c), the complaint did not allege a violation of this rule, and the facts needed for a finding were not well developed below. The DEC may have been persuaded by respondent's admission that he had followed Pianfetti's closing instructions in the matter, rather than use his own judgment. However, there is no clear and convincing evidence that he allowed Pianfetti to control his professional judgment. To the contrary, it appears that respondent simply chose the short cut to his fee, rather than study the documents to the transaction. Therefore, we dismissed the belated allegation of a violation of RPC 5.4(c).

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[4] We dismissed the allegation of a violation of RPC 4.1, as RPC 8.4(c) adequately addresses respondent's misconduct in this regard.

Another issue remains that was not dealt with by the DEC. First, respondent failed to properly supervise McClurg, in violation of RPC 5.3 (b) and (c) (1), which provide that:

> [w]ith respect to a nonlawyer employed or retained by or associated with a lawyer:
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> ....
>
> (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
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> (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
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> (1) the lawyer orders or ratifies the conduct involved.

By his own admission, respondent gave McClurg control over document preparation for the Rice to Koenig closing. However, he also executed critical closing documents without regard to their content. In so doing, respondent abdicated his authority as an attorney, in violation of RPC 5.3. Although respondent was not specifically charged with RPC 5.3, the record developed below contains clear and convincing evidence of a violation of RPC 5.3. Furthermore, respondent did not object to the admission of such evidence in the record. In light of the foregoing, we deemed the complaint amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

Finally, there remains Koenig's claim that respondent misappropriated a $40,000 bank check that Koenig claimed to have given respondent to cover the shortfall. The DEC so utterly disbelieved Koenig that the panel discounted the assertion out of hand, noting however, that it did not investigate that allegation. However, the DEC may have labored under a misapprehension — that respondent had been the subject of an

exhaustive investigation in the prior disciplinary matter. That investigation covered only those five matters referred to in that record: Martin to Schwab; Schwab to Ross; HUD to Schwab; Federal Home Loan to Schwab; and Ocwen Federal Bank to Schwab. Respondent's trust and business account records were not the subject of an investigation at that time. Nevertheless, we found Koenig's story about the bank check equally unbelievable, and dismissed that allegation.

Ordinarily, acts of dishonesty, such as the falsification of public documents or lending documents, warrant a period of suspension. See, e.g., In re Alum, 162 N.J. 313 (2000) (one-year suspended suspension for knowingly participating in a series of real estate transactions in which secondary financing was not disclosed to the primary lender; the Court stated that the passage of time — eleven years, the attorney's unblemished record, and his exemplary community service militated in favor of suspending the suspension); In re Labendz 95 N.J. 273 (1984) (one-year suspension for knowingly assisting others in an attempt to perpetrate a fraud by including a $7,000 credit in closing documents to a real estate transaction, when the attorney knew that the credit was bogus); In re DiBiasi 102 N.J. 152 (1986) (three-month suspension for attorney whose client sought a $2.1 million mortgage loan for purchase of a commercial building; a lease prepared by client purported to show that a portion of the building was subject to a binding lease, which was untrue; prior to the closing, the attorney learned that the lease was false, yet he yielded to the client's request not to reveal that fact to the lender). A reprimand has been imposed where, as here, the attorney was unaware of the falsity of the information contained in the closing document. See In re Agrait, 171 N.J. 1 (2002) (reprimand for failure to disclose the existence of prohibited secondary financing on an

affidavit of title, and to collect a $16,000 down payment later shown on the RESPA statement in favor of the client, with the result that the RESPA statement contained a misrepresentation; the attorney had relied on the client for the veracity of information, some of which was untrue, before placing it in the closing documents). Respondent also failed to supervise his paralegal, McClurg. His prior reprimand case is often cited for the prospect that failure to supervise nonlegal employees will yield a reprimand. In re Riedl, 172 N.J. 646 (2002). We determined that respondent's misconduct can be distinguished from the Alum line of cases, which resulted in suspensions, insomuch as this respondent was not an active participant in a scheme to defraud through the use of false closing documents. It is more akin to that committed in Agrait, supra. Therefore, we unanimously determined to impose a reprimand. Three members did not participate. One member recused himself.

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

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 Matter of Jeffrey M. Riedl
Docket No. DRB 03-328

Argued: November 20, 2003

Decided: February 18, 2004

Disposition: Reprimand

Members	*Disbar*	*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:			5			1	3

Julianne K. DeCore
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Chief Counsel