SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-033
District Docket Nos. XIV-97-365E
and VIII-04-900E

IN THE MATTER OF	:
	:
MARY HELEN RICHARDSON	:
	:
AN ATTORNEY AT LAW	:

Decision

Argued: March 17, 2005

Decided: April 28, 2005

John J. Janasie appeared on behalf of the Office of Attorney Ethics.

Peter A. Ouda appeared on behalf of respondent.

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 filed by the District VIII Ethics Committee ("DEC"). Count one of the complaint alleged that respondent gave false testimony in a deposition and in a supplemental proceeding, concerning her knowledge of the disposition of the proceeds of two mortgage closings. She was charged with having violated RPC 3.2 (failure to expedite litigation), RPC 4.1 (truthfulness in

statements to others), RPC 1.15(a) (failure to safeguard funds), RPC 1.15(b) (failure to promptly deliver funds to a client or third party), RPC 8.4(b) (criminal conduct that reflects adversely on an attorney's honesty, trustworthiness or fitness as a lawyer),[1] RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). The charges in count two stemmed from allegations that respondent was not truthful during a supplemental proceeding, when questioned about her business account records. She was charged with having violated RPC 3.2, RPC 3.4(a) (fairness to opposing party and counsel), RPC 4.1, RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d). Count three charged respondent with recordkeeping violations (RPC 1.15(d) and R. 1:21-6).

The parties entered into a stipulation of facts that was incorporated into the DEC's report.

Respondent was admitted to the practice of law in New Jersey in 1987. She has no history of discipline.

During the time in question, respondent was employed as in-house counsel for Richardson Industrial Contractors, Inc., and St. Lawrence Corporation, both family-owned companies. She

[1] The complaint alleged that respondent violated N.J.S.A. 2C:28-2a, which states, "[a] person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true, is guilty of a crime of the fourth degree."

maintained a personal bank account at Farrington Bank. She opened trust and business accounts in 1996.

On January 25, 1995, respondent represented her ninety-one-year old grandmother, Helen Richardson, now deceased, in connection with the re-financing of two properties owned by the grandmother, located in Mantoloking Shores and Bernards Township, New Jersey.[2] The loans, from Merrill Lynch Credit Corporation, ("Merrill Lynch"), were for $498,000 and $182,000, respectively, and secured by mortgages on the two properties. Although the HUD-1 settlement statements represent that General Land Abstract was the settlement agent, that company issued closing service letters to Merrill Lynch, approving respondent as the attorney for the transactions.

Helen Richardson was not present at the closings. Both of the refinances were conducted pursuant to a 1992 power of attorney given by Helen Richardson to her son, Harry A. Richardson, Jr., respondent's father. Witold R. Trzesniowski, who notarized documents at the closing, testified at a deposition that he saw Harry Richardson sign the closing documents. There are no notations on the documents or in the files that the January 1995 transactions were conducted via a power of attorney.

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[2] Helen Richardson was actively involved in the Richardson companies.

The funds for the two refinance transactions were deposited into respondent's personal account at Farrington Bank. At the time of the transaction, respondent did not maintain an attorney trust account.[3] Respondent testified below that the money was put in her personal account at the direction of Harry Richardson and Helen Richardson. At the time of the refinancing, Harry Richardson was in charge of various Richardson companies. The companies were experiencing financial difficulties.[4]

In addition to utilizing the loans' proceeds to pay off a $260,000 first mortgage in the name of Helen Richardson, which encumbered the Mantoloking property, respondent disbursed approximately 600 checks from her personal account. Included in the stipulation is information about the series of checks. In general, the checks went to pay the taxes, mortgage, and maintenance on a parcel of land in Alexandria Township, New Jersey, that was owned by respondent, and had been owned by the Richardson family in the past.[5] Seven of these checks, totaling $26,384.03, were made out to respondent. The stipulation contained the following chart, reflecting some of the checks

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[3] Respondent contended that, as in-house counsel, she was not required to maintain a trust account. The refinancing, however, involved Helen Richardson personally, not Richardson company properties.

[4] As noted in the hearing panel report ("HPR"), Harry Richardson was found guilty of various criminal violations, including theft by deception in 2000, and theft by failure to make required disposition in 1999.

[5] Exhibit P-5, the deed for the Alexandria property, reveals that respondent's parents transferred it to her for $1 in 1989.

written by respondent from her personal account, after the deposit of the funds:

Date	Check #	Payee	Amount
2/9/1995	1384	Township of Alexandria	12,851.85
2/25/1995	1578	Brooks Brothers	1,808.00
2/27/1995	1589	First Pioneer Farm Credit	5,589.59
3/15/1995	1641	Sears	1,748.87
4/5/1995	1927	Maple Spring Fence Company	3,272.30
4/19/1995	2005	Maple Spring Fence Company	2,384.25
4/19/1995	2007	Maple Spring Fence Company	3,680.95
5/26/1995	1708	First Pioneer Farm Credit	5,116.54
5/27/1995	2402	Mid-Atlantic Equestrian Medical Center	2,400.00
6/2/1995	1972	Mary Helen Richardson	6,311.24
7/1/1995	2438	Mary Helen Richardson	1,886.48
7/3/1995	2502	Ken Novack	2,174.50
7/3/1995	2437	Mary Helen Richardson	2,968.84
7/4/1995	2442	Mary Helen Richardson	2,992.76
7/6/1995	2447	Mary Helen Richardson	2,838.28
7/6/1995	2419	Mary Helen Richardson	6,500.00
7/6/1995	2447	Mary Helen Richardson[6]	2,838.28
7/11/1995		Wire Transfer to Roe Inc.[7]	111,482.94
7/19/1995	2441	Mary Helen Richardson	2,886.43
6/30/1995	2416	Ken Novack	2,500.00
4/27/1995	1910	First Pioneer Farm Credit	5,589.59
2/4/1995		Farm Credit of North Central Jersey	5,600.00
1/29/1995	2418	First Pioneer Farm Credit	5,116.54

[S¶17.][8]

[6] This check appears twice in the chart.

[7] Roe, Inc. was incorporated on July 5, 1995. Helen Richardson and Mary Cooney Richardson, respondent's mother, served as the incorporators and corporate directors. These funds were the first deposit into Roe, Inc.'s Farrington Bank account, which was opened on July 12, 1995.

[8] "S" refers to the stipulation.

Respondent testified before the DEC that the funds were disbursed as directed by Harry Richardson, in consultation with Helen Richardson. She explained that the checks payable to her were reimbursement for litigation expenses.[9]

In June 1997, Banker's Trust began foreclosure proceedings arising from the 1995 transactions, as assignee of Merrill Lynch. The matter was tried before the Honorable James D. Clyne, P.J.Ch. Helen Richardson claimed that the loans were obtained through fraud and forged documents. Judge Clyne found that Helen Richardson did not prove fraud in connection with the 1992 power of attorney or the January 1995 mortgages; Judge Clyne noted that Harry Richardson "did not reveal on the documents themselves that he was signing as attorney-in-fact for Helen M. Richardson. Rather, he signed his mother's name thereby suggesting on the face of the document that she was in attendance."

During a December 1997 deposition in the underlying litigation, captioned Bankers Trust Company of California, N.A. vs. Helen Mary Richardson, et al., counsel for the plaintiff questioned respondent about the funds from the transactions:

> Q: Did you lawfully dispose of the net proceeds that were given to you as a result of the closing pursuant to your clients' instructions?
>
> A: Yes.

[9] There are no allegations that respondent misused the proceeds of the loans.

Q: You didn't keep the money for yourself; is that correct?

A: No.

Q: You didn't use the money for your own use and benefit; is that correct? For your own benefit, use, and enjoyment?

A: No.

[Ex.20 at 34-23 to 35-7.]

Counsel for the plaintiff in another lawsuit, Starbare III Partners, L.P. vs. St. Lawrence Corporation, et al., questioned respondent at a March 1997 deposition in a supplemental proceeding:

Q: Let me paint a picture for you, ma'am. As a result of the Merrill Lynch mortgage, did any proceeds, pertaining to funds from Merrill Lynch related to this mortgage, make its way into any account that you owned, controlled or possessed?

A: Oh, absolutely not.

Q: What about the $260,000 that came out of your account at Farrington Bank? Did any portion of that $260,000 come from or arise from the Merrill Lynch loan?

A: I'm stating to you, I don't recall that check and I believe that the attorney/client privilege would, would apply in that situation. But, if you're asking me if I received any money from that, mortgage, no, the answer is no.

Q: I am asking you, just so we're absolutely clear, for the record, I'm asking you whether any proceeds from the Merrill Lynch mortgage made its way into any account for which you controlled, owned, possessed or had any authority over?

A: And I'm stating that the attorney/client privilege would apply in that situation, but that I did not personally benefit from any money, with regard to this mortgage. If you're asking do I have an asset, or any cash from that, excuse me, from that which is a perfectly legitimate question in my mind. The answer would be, no, I do not. I do not benefit.

Q: I'm not asking you if you previously have ever had any, I'm asking presently, if you presently do?

A: No, the answer would.

Q: Do you know whether any other person benefited from the proceeds of the Merrill Lynch mortgage, other than your grandmother?

A: I do not know of anybody else, other than, my grandmother, that would have benefited from it and what she did what [sic] the money, I don't know which she received it.

Q: Do you know for a fact that your grandmother executed this mortgage?

A: Yes, I do.

Q: You do know for a fact?

A: Yes, I do.

[Ex.21 at 253-2 to 254-22.]

Later, during the March 1997 proceeding, the following exchanges occurred between plaintiff's counsel and respondent:

Q: Did you receive any been [sic] proceeds from the Basking Ridge loan?

A: No.

Q: Do you know where the proceeds from the Basking Ridge loan are?

A: No, I don't.

. . . .

Q: Okay. If I were to subpoena the records from Merrill Lynch Credit Corporation, would I find that the proceeds of either the Mantoloking loan or the Basking Ridge loan, made it into an account not controlled, operated or in the custody or possession of Helen M. Richardson?

A: I don't believe you would.

Q: Would I find that that money went to the account of Richardson Industrial Contractors?

A: I don't believe you would, no.

Q: Would I find that that money went into an account of an entity controlled by Richardson Industrial Contractors or Harry A. Richardson?

A: No.

Q: Would I find that that money went into the custody or control of you?

A: No.

[Ex.21 at 269-6 to 275-12.]

Respondent contended before the DEC that she answered truthfully all questions posed to her in the underlying proceedings. She stated that, in her view, once the proceeds from the Merrill Lynch closings were deposited into her account, the account "was no longer [hers] to own, control, possess, to exercise complete dominion over." She explained further that,

once the funds were in her personal account "and over 99 percent of that money was Helen M. Richardson's money, [she] no longer considered that to be [her] account but actually an account more controlled by Helen M. -- Harry A Richardson through his power of attorney with Helen M. Richardson."

In March 1997, during a deposition in the Starbare III Partners litigation referenced above, respondent testified that she had trust and business accounts at Sun Bank, but that she did not retain copies of business account bank statements, cancelled checks or deposit slips. Respondent refused to answer questions about her trust account.

Thereafter, in February 1998, pursuant to a demand audit notice from the Office of Attorney Ethics ("OAE"), respondent provided original bank statements, deposit tickets, and cancelled checks from her Sun National Bank trust account, from September 1996 through March 1997. In addition, she provided original bank statements from her attorney business account at Sun National Bank, from August 1996 through January 1998.

During the DEC hearing, respondent was questioned about her deposition testimony regarding her bank records:

> [By respondent's counsel]
>
> Q. Ma'am, I want to draw your attention to Count Two of the stipulations [sic]. It's on page eight. You see where I'm reading?
>
> A. Yes.

Q. You indicated – at least it's indicated here. It says – paragraph one in the third line says, 'On March 13, 1997 while under oath, respondent testified that she had a trust and business account at Sun Bank but that she did not retain copies of business account statements, canceled checks or deposit slips.'
Did you testify to that at your deposition?

A. Yes.

Q. Was that testimony truthful?

A. Yes.

Q. Why was it truthful?

A. It was truthful because, again, this was at the supplementary proceeding that we've been talking about; and the first question was, 'Do you maintain any other accounts anyplace?' [sic] And I said yes, and I told them about the Sun National Bank accounts, the trust account and – the attorney trust account and the business account; but then I told him also that the main branch was in Vineland, New Jersey and that the branch that I held my account at was in Trenton; and then later on in the questioning it got kind of confusing because while I had told him right in the beginning that my account was in Trenton and he kept asking the questions as to the Vineland – as to receiving statements and other material from Vineland, New Jersey. So that was one thing.

And then the other thing was in my mind, to retain copies means that they would be readily accessible. That they – 'to retain' means to keep in a particular place at hand. And 'to maintain' would mean to keep them up. And also when I said 'discard,' I meant that would be put

aside, that discard meant to be put aside. I never said that I destroyed these statements. I never had any intention to say that. That – just that I knew that at that time it would create an exhaustive search for me to try to locate these documents. I had them but I didn't know where they were and so that I used those words, 'discard' and 'retain' and 'maintain' in – with those meanings in mind.

. . . .

[By the presenter]

Q. And what you're trying to tell us today is that Mr. Slama's [plaintiff's counsel] questions, in your mind, 'discard' didn't equal 'destroy.' Is that what you're saying?

A. Yes.

. . . .

Q. What you're telling us today is that Mr. Slama didn't ask the right questions in terms of whether you destroyed or discarded your records, correct?

. . . .

A. No. I mean I think Mr. Slama asked the right questions. He asked the questions he wanted to ask; but my meaning, the knowledge that I have, the meaning to me means – 'discard' means to put aside. And maintain – 'retain' means to keep in a particular place and have these things readily accessible. They were not readily accessible to me. Had he asked me if I destroyed the documents, I would have said no; but he didn't ask me that question.

Q. He also asked you a question concerning – I believe the word was 'retain.' Did you retain the documents, correct?

A. Yes.

Q. And you interpret 'retain' to mean readily accessible?

A. I mean I interpret it to mean to put aside.

Q. So you thought just because you didn't have the documents with you on the date of the sup pro, which I believe was March 13, 1997, that you believed you didn't retain them since they weren't within your –

A. No. It wasn't because I didn't bring them with me. It was because I didn't know where to locate them at the time.

Q. But you didn't tell Mr. Slama, 'I don't know where to locate them.' You said, 'I didn't retain them,' correct?

A. Yes. Because I feel –

Q. I'm not asking you because. If you could answer my question.

[Respondent's counsel]: Why don't you show her exactly what she answered?

Q. I believe that your answer was you didn't retain copies of business account bank statements, canceled checks, correct?

A. Well, I'd actually have to look at the testimony; but I said that I didn't retain copies, meaning that I laid them aside or put them aside –

Q. Right.

A. -- in a location; but I did not say I destroyed them and that to me there's a difference between 'retain' and 'destroy.'

(T140-24 to 147-21.)[10]

[10] T refers to the transcript of the DEC hearing on December 20, 2004.

William Ruskowski, an assistant chief investigator for the OAE, testified at the DEC hearing about respondent's recordkeeping practices. According to Ruskowski, respondent did not maintain receipt and disbursement journals for her trust and business accounts, did not maintain a running checkbook balance, did not maintain client ledger cards, and did not perform reconciliations of her account. Respondent conceded that she did not follow the required recordkeeping procedures.

The DEC found respondent guilty of each of the charged violations, with the exception of RPC 8.4(d) in count one. The DEC used forceful language to announce those findings.[11]

As to count one, the DEC concluded that respondent's testimony at her depositions and before the DEC was not truthful. The DEC based its conclusion on her demeanor and "her astounding testimony regarding her understanding of the definitions of commonly used words," and noted that her testimony and the "utterly incredible" testimony of her father lacked "internal consistency." The DEC added that "the seemingly scripted testimony of both Respondent and her father was in effect an attempt to justify improper acts after they had occurred. The testimony of both Respondent and her father flew in the face of facts that were obvious to the Panel."

[11] The DEC did not explain why it did not find a violation of RPC 8.4(d) in count one.

It was clear to the DEC that respondent benefited from the disbursements from her grandmother's loans, knew that she benefited, and knew that her deposition testimony was not truthful at the time she gave it. In the DEC's view, "[t]here can be no doubt that Respondent was a knowing participant (along with her father) in a tacit agreement to take whatever steps were necessary to keep her grandmother's money from going to the IRS, State of New Jersey Division of Taxation and/or to creditors."

As to count two, the DEC was similarly unpersuaded by respondent's attempts to claim that she did not understand the plain meaning of simple words, calling her attempt at word play "not honest."

As to count three, as noted above, respondent admitted that she did not follow the recordkeeping procedures required by the rules.

In recommending the appropriate measure of discipline, the DEC was clearly swayed by the mitigating factors:

> Respondent was placed in a virtually impossible situation by her father, Harry A. Richardson, Jr. We find that the actions of Respondent were mainly the result of two things: First, she had a total lack of experience in the operation of a private practice law firm; Second, and more importantly, she was under the control and manipulation of her father. It is our opinion that Harry Richardson set up his daughter. He dominated her in order to further his own agenda which primarily involved an attempt to conceal money to make sure that his immediate family retained money that should have

> been paid to the IRS, State of New Jersey and various judgment creditors. In a pathetic scheme to save himself from financial ruin, Harry A. Richardson, Jr., malevolently used his own daughter to further and fulfill his own sinister agenda.
>
> [HPR9-10.]

The DEC recommended the imposition of a reprimand.

Upon a de novo review of the record, we are satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence. We agree with the DEC that each of the violations alleged in the complaint has been proven to the required standard.

In its brief to us, the OAE argued that, even taking into account the mitigating factors, a period of suspension is required in this case. The OAE pointed out that respondent engaged in a recurring pattern of "conscious misstatements under oath." The OAE pointed to a number of cases where attorneys have been severely disciplined for lying under oath or displaying other dishonest conduct.

The OAE's concerns about respondent's truthfulness are well-placed. Respondent lied repeatedly in the court proceedings and also before the DEC. Her lies, under oath, were a grave form of misconduct, and reveal a disturbing deviation from the standards of suitable behavior and good character expected from a member of the bar. Respondent's misrepresentations were not

made to an adversary or a client or a court under the pressure of a heated moment. Respondent's statements were not made under exigent circumstances, where she zealously sought to assist a client. Respondent's lies were self-serving and calculated to advance her own interests and the interests of her family. Her actions merit serious discipline. "In the legal profession, there must be a reverence for the truth." In re Hyra, 15 N.J. 252, 254 (1954). Furthermore, respondent's linguistic games about the meaning of common words insulted the intelligence of the hearing panel and belittled the dignity of the ethics proceedings.

Discipline in cases involving misrepresentation and deceit in court proceedings has varied greatly, ranging from an admonition to a three-year suspension. See, e.g., In re Lewis, 138 N.J. 33 (1994) (where the attorney received an admonition for attempting to deceive a court by introducing into evidence a document falsely showing that a heating problem in an apartment of which he was the owner/landlord had been corrected prior to the issuance of a summons); In re Mazeau, 122 N.J. 244 (1991) (public reprimand for making a false statement of material fact in a brief submitted to a trial judge); In re Paul, 167 N.J. 6 (2001) (three-month suspension where attorney lied on an application for malpractice insurance and also made oral misrepresentations to his adversary and written

misrepresentations in a deposition and in several certifications to the court; the attorney had been disciplined on three prior occasions); In re D'Arienzo, 157 N.J. 32 (1999) (three-month suspension for attorney who twice misrepresented to a municipal court judge his reason for not appearing in court); In re Kernan, 118 N.J. 361 (1990) (three-month suspension for filing a false certification in the attorney's own matrimonial matter); In re Johnson, 102 N.J. 504 (1986) (three-month suspension for misrepresenting to a trial judge that the attorney's associate was ill; the attorney's intent was to obtain an adjournment of a trial); In re Schleimer, 78 N.J. 317 (1978) (one-year suspension for attorney convicted of false swearing during a deposition in a matter in which he was the plaintiff; mitigating factors included attorney's age, failing health and prior unblemished record with the exception of a reprimand in New York for failing to timely file a satisfaction of judgment); and In re Lunn, 118 N.J. 163 (1990) (three-year suspension for attorney who submitted a false written statement by a witness in support of his own claim for personal injuries and lied about the authenticity of the statement under oath in a civil action pursued for his own benefit).

In addition to respondent's repeated misrepresentations, she failed to keep safe the proceeds from the two refinancings by placing them into her personal account. She stated that she

did so at her father's instruction. As the DEC found, an inference may be drawn that the funds were placed in respondent's account to ensure that they went to the Richardson family and not to the IRS, State of New Jersey, or other judgment creditors. There are no criminal charges against respondent stemming from this aspect of her father's apparent scheme.

Furthermore, respondent allowed Harry Richardson to sign Helen Richardson's name on the refinancing documents, with no notation indicating that the transactions were conducted via a power-of-attorney. Although that fact was clear to the parties, the representation made to "the world" was that Helen Richardson attended the closings. Even though it appears that no harm came from this representation, it was, nevertheless, improper.

That respondent was directed in her actions by Harry Richardson does not excuse her misconduct. See In re Ezon, 172 N.J. 235 (2002) (reprimand imposed where the attorney aided his father, a disbarred New Jersey attorney, in practicing law). Furthermore, at the time of the depositions in question, respondent had been a member of the bar for approximately ten years. She was not a child or a naïve, young practitioner[12].

[12] Respondent was born on May 1, 1960, making her almost thirty-five years old at the time of the transactions.

A period of suspension is clearly mandated here. Respondent's repeated misrepresentations show a complete lack of the honorable traits required of a member of the bar. That her lies were calculated and served to advance her own interests and those of her family makes her actions all the more egregious. Respondent's actions are akin to those found in In re Schleimer, supra, 78 N.J. 317, where a one-year suspension was imposed on an attorney who lied during a deposition, in order to advance his own interests; the attorney was convicted of false swearing.

We are willing to consider, as mitigation, that apparently respondent was completely financially dependent on her parents. During the DEC hearing, respondent stated that, throughout the time in question, she was paid under $8,000 for her work for the Richardson companies. She explained that she received "loans from various family members." Respondent may have felt compelled to act as she did, rather than defy her family's instructions and face a sudden and complete loss of her income. In addition, unlike Scheimer, respondent was not criminally convicted as a result of her actions. In light of the foregoing, we determine that a six-month suspension is the appropriate measure of discipline for respondent's ethics lapses. But see In re Paul, supra, 167 N.J. 6 (where only a three-month suspension was imposed for the attorney's oral misrepresentations to his adversary and written misrepresentations in a deposition as well

as in several certifications to a court; the attorney also lied on an application for malpractice insurance and had been disciplined on three prior occasions).

Members Matthew Boylan, Esq. and Robert Holmes, Esq. did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Mary Helen Richardson
Docket No. DRB 05-033

Argued: March 17, 2005

Decided: April 28, 2005

Disposition: Six-month suspension

Members	Six-month Suspension	Reprimand	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:	7				2

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel