

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-261

IN THE MATTER OF :
:
RONALD REICHSTEIN :
:
AN ATTORNEY AT LAW :
:
:

Decision

Argued: October 18, 2001

Decided: February 14, 2002

Ronald L. Washington appeared on behalf of the District VC 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 filed by the District VC Ethics Committee ("DEC"). The five-count complaint charged respondent with violations of RPC 3.1, RPC 3.3(a), RPC 3.4(b) and RPC 8.4(c).

The first count charged that respondent filed a motion for summary judgment and defended a complaint and order to show cause knowing or not reasonably believing that there was a good faith basis for his position, in violation of RPC 3.1.

The second count charged that respondent violated RPC 3.3(a) by filing a motion for summary judgment that failed to disclose the real facts to the tribunal and by filing false and misleading certifications in an effort to assist his client in committing an illegal, criminal or fraudulent act.

The third count charged that respondent violated RPC 3.4(b) when (1) he made false and misleading statements to opposing counsel in settlement discussions, (2) closed on a property knowing that a notice of lis pendens had been filed and (3) filed a false affidavit of title that had the effect of counseling a witness to testify falsely about the financial condition of her husband and the existence of a prior judgment against him.

The fourth count charged that respondent helped his clients transfer all marital assets from the husband's name to the wife's, in order to thwart a creditor's attempt to collect on a judgment. This count also charged that respondent helped his clients transfer the marital home to an innocent purchaser to further the clients' campaign and that he also prepared and filed a false affidavit of title in the real estate transaction, in violation of RPC 8.4(c).

The fifth count charged that respondent attempted to mislead the ethics investigator by omitting material information about (1) his prior professional relationship with his clients, (2) his assistance in transferring the marital assets to the wife, (3) his knowledge that his

client gave false testimony in a post-judgment deposition and (4) his submission of a false affidavit of title to assist in the fraudulent transfer of the marital home to an innocent third party, in violation of RPC 8.4(c).

Respondent was admitted to the New Jersey bar in 1959. He has no disciplinary history. At the relevant times, he maintained an office in West Orange, New Jersey.

* * *

The grievance in this matter was filed by Stornawaye Properties, Inc. ("Stornawaye") through its counsel James B. Daniels. At the DEC hearing, Daniels testified about the background of the case. He explained that, prior to 1990, respondent had represented Gordon and Evelyn Ash in certain transactions. Gordon Ash was involved in a number of partnerships, including Patterson Renaissance Partners ("Patterson"). In September 1989, Patterson obtained a loan from the Broadway Bank and Trust Company ("Broadway"). Gordon and Evelyn were two of several guarantors for the loan. After Patterson defaulted on the loan in January 1990, Broadway sued the partnership and the guarantors. Respondent represented Evelyn in the lawsuit, while another attorney represented the partnership and some of the other guarantors, including Gordon. According to Daniels, respondent obtained a dismissal of the suit against Evelyn, based on the allegation that her husband had forged her signature on the loan documents. On June 20, 1990, five months

after the lawsuit was filed, Gordon conveyed his interest in the marital home to Evelyn for one dollar. The deed was recorded on July 2, 1990 and reflected title solely in the name of Evelyn Ash. Respondent prepared the deed conveying the property and filed it with the county clerk. After this transfer occurred, on September 14, 1990, judgment was entered against the guarantor/defendants for \$404,605.01.

Daniels explained that Stornawaye was in the business of buying distress loans from banks. The judgment against Patterson and its guarantors was one of the judgments purchased by Stornawaye from the Federal Deposit Insurance Corporation ("FDIC"), in its capacity as receiver for Broadway.

In August 1999, Daniels learned of a 1991 post-judgment deposition of Gordon. Daniels discovered that, at the deposition, Gordon falsely testified that he had transferred the marital home to his wife in 1981, rather than 1990. Daniels, thus, filed a fraudulent conveyance action against the Ashes in August 1999, under the Uniform Fraudulent Transfer Act, N.J.S.A. 25:20-20, et. seq. Respondent was served with the complaint. Shortly thereafter, a notice of lis pendens was filed on the property, a copy of which was not served on respondent. According to Daniels, Stornawaye had written to respondent on or about October 5, 1999 to, among other things, notify him of the notice of lis pendens. Respondent claimed, however, that he found out about the notice of lis pendens much later.

Respondent filed an answer to the civil complaint on October 11, 1999. According to Daniels, on the next day, October 12, 1999, respondent represented Evelyn in the sale of

the marital home to Mr. and Mrs. Langer, who were clients of Daniels' law partner, Steven Fleissig. Daniels did not learn that the sale had taken place until later.

In connection with the sale, respondent prepared an affidavit of title indicating that Evelyn was not aware of any claims pending against her or the property. Both Evelyn and respondent signed that document. Daniels stressed that, even though respondent had filed an answer in the fraudulent conveyance action the day before the sale, he nevertheless had his client sign the false affidavit of title. Daniels believed that, because of their conversations regarding the litigation and the fact that respondent had filed an answer to the complaint, he had to be aware of the pending claim, despite his contention that he did not make the connection between the litigation and the paragraph in the affidavit of title.

Daniels testified that, at some unknown point, his suspicions were aroused by Gordon's 1991 deposition testimony, where he had claimed that he had no assets and that everything was in his wife's name. Daniels, therefore, ordered a corporate search of Gordon's construction company. According to Daniel's the search revealed that, when the company was incorporated, Gordon was the sole shareholder. Daniels continued that, at the 1991 deposition, Gordon testified that he was only an employee of the company and that everything was in his wife's name. Daniels believed that Gordon Ash was a "liar and a cheat." T57.¹

¹ T denotes the transcript of the April 19, 2001 DEC hearing.

Once Daniels learned about the closing on the Ash property, he rushed to put together an order to show cause for temporary restraints to prevent the proceeds of the sale from being dissipated. Daniels admitted that he learned of the sale through his conversations with respondent, while unsuccessfully attempting to settle the fraudulent conveyance action.

In October 1999, respondent filed a motion for summary judgment. Prior to the return date on the motion, the Ashes retained new counsel. At the summary judgment proceeding, the court made preliminary findings that (1) the statute of limitations did not start to run until the discovery of the fraud, in August 1999; (2) in order to accomplish the closing of the sale of the Ash property, Evelyn, with the assistance and guidance of respondent, executed an affidavit of title and other closing documents affirmatively denying the existence of any claim against the property; and (3) that the conduct of the Ashes and respondent in failing to disclose the existence of the fraudulent conveyance action constituted a fraud upon the purchaser of the property, the title company and Stornawaye. The court denied respondent's motion and suggested that Daniels file a motion under R.4:46-5(b) for reasonable attorney fees, based on respondent's bad faith affidavits. Exhibit P-7. According to Daniels, the court imposed a \$10,000 sanction against respondent.

As of the date of the DEC hearing, there was no final determination in the fraudulent conveyance action. Daniels pointed out, however, that, during the summary judgment proceeding, the judge concluded, and no one contested, that the transfer was fraudulent. The only issue left for determination in the litigation was whether the statute of limitations had

run. Daniels indicated that a dispositive motion would be filed within a week or two of the DEC hearing.

Gordan Ash testified that respondent had represented him prior to the 1990 litigation by Broadway. Although Gordon's testimony was somewhat vague, he indicated that respondent had represented him in connection with a couple of "projects" and that respondent had drafted wills for him and his wife. Gordon admitted that he had signed the papers obligating his wife as a guarantor on the loan from Broadway.

Gordon claimed that both he and his wife asked respondent if there was a problem signing the affidavit of title containing the statement that there were no pending lawsuits or judgments against them. According to Gordon, respondent told him not to worry about it. Gordon conceded that both he and his wife read the affidavit of title before signing it. Gordon testified that he had filed a malpractice claim against respondent.

Respondent, in turn, testified that he believed that there was no restriction on the sale of property, if an individual was being sued, and that the sale did not render the seller judgment-proof or defeat judgment creditors. According to respondent, he was aware that, in 1990, Gordon had substantial assets, including a house in West Orange worth more than \$1,000,000, was involved in a multi-million dollar construction project, had inherited a substantial amount of money and had other interests in real estate. Thus, respondent claimed, he did not believe at the time that the transfer had rendered Gordon judgment-proof.

Respondent believed that, because there is a four-year statute of limitations for fraudulent conveyance actions, Evelyn owned the house free and clear in 1990 and could, therefore, sell it. Respondent raised the statute of limitations argument in his summary judgment motion. He claimed that he was not aware of Gordon's misstatements in his deposition, at the time he filed the motion. Respondent did not argue that motion because the Ashes were unhappy with "what happened" and retained another attorney.

Respondent testified that he had Evelyn sign the deed and affidavit of title and told the Ashes that, as long as a notice of lis pendens had not been filed, they could go ahead with the sale. Respondent realized that that was incorrect advice and claimed that he did not act intentionally:

I had some kind of block. I just separated in my own mind the litigation and the real estate. I just didn't make that connection. I had nothing to gain by taking the affidavit. . . . The Ashes were not moving out of the State. They moved to Bergen County. The money was held in New Jersey in a Merrill Lynch account.

~~I know that Mr. Davis and Mr. Higuchi are in the same firm. I believe that they both know the firm was pending the closing was coming up. If they didn't know that, they would certainly find out within a day or so. There was just no reason for me to do it and no advantage to either me or to the Ashes. I slipped up. I admit it. I'm not as young as I used to be. I had a block. I'm sorry. That is really what happened.~~

Now, when I realized what happened, I knew in my own mind I shouldn't practice law anymore. I figure I'm 67 at that point, and, immediately, I think before they even filed some of your papers, I looked around to try to arrange a merger with another firm. I couldn't just close my doors and walk away with my clients hanging. So I thought a merger would be the best solution, and I advertised in November looking for a merger partner . . . actually merged in February and my commitment with them was to stay there one year,

which I did this past February. I no longer have any connection with that firm.

[T120-122]

Respondent testified that, as of the date of the DEC hearing, he no longer had any private clients. He had a two-year commitment as the attorney for the West Caldwell Planning Board, his only client. That commitment expires at the end of this year. Respondent expressed his belief that he was too old to continue practicing law.

Respondent admitted his conduct from the outset. His reply to the grievance stated as follows:

I did represent Evelyn Ash in connection with the sale of her home . . . and did take my client's signature on and furnish an Affidavit of Title at closing which erroneously stated that 'there are no pending lawsuits or judgments against us or other legal obligations which may be enforced against this property.' . . .

At the time I knew about the pending litigation instituted by [Stornawaye's attorney], had read the Complaint and had settlement discussions with James Daniels . . . and had prepared and filed the Answer. Although a Notice of Lis Pendens was evidently filed on September 8, the Register's office was behind in recording and it did not appear of record until sometime after the closing on October 12. . . .

I just did not make the mental connection between the Affidavit of Title and the pending litigation at the time the Affidavit was prepared, signed and delivered and accept full responsibility for doing so.

[Exhibit P-15]

* * *

At the DEC hearing, the presenter noted that, although respondent's conduct was improper, he accepted full responsibility for his actions, recognized his wrongdoing, derived no profit therefrom, acted with no intent to deceive anyone and planned to retire from the practice of law. The presenter added, however, that respondent's actions defrauded the Ashes' creditors.

The DEC found only a violation of RPC 3.4(b) (prohibiting a lawyer from falsifying evidence or assisting a witness to testify falsely), in that respondent counseled or assisted Evelyn Ash in executing a false affidavit of title in connection with the sale of the marital residence.

In mitigation, the DEC found that respondent no longer actively practices law, cooperated fully with the ethics investigation and has an otherwise unblemished record. The DEC recommended a reprimand.

* * *

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

The DEC properly concluded that there was no clear and convincing evidence of a violation of RPC 3.1. There is insufficient evidence that respondent improperly filed a

motion for summary judgment or that the motion was frivolous. It was respondent's reasonable belief that the statute of limitations would apply to the fraudulent conveyance and that the matter would be dismissed.

The complaint also charged that respondent's motion for summary judgment failed to disclose material facts to the tribunal that would tend to mislead it, in violation of RPC 3.3(a). As noted by the DEC, apparently the court was under the mistaken impression that respondent had represented Gordon Ash during his deposition testimony in July 1999, at which time Gordon had made false statements. In fact, respondent did not represent Gordon at that deposition and claimed that he was not aware of the false testimony until 1999. Thus, the charge of a violation of RPC 3.3(a), too, is dismissed.

Count three charged that respondent made false and misleading statements to opposing counsel in settlement discussions, handled the closing on property knowing that a notice of lis pendens had been filed against it and filed a false affidavit of title. The DEC properly found a violation of RPC 3.4(b). Respondent drafted an affidavit of title containing a false statement about any pending actions or liens against the seller and had Evelyn sign the document. Respondent's claim that he did not connect that document with the pending litigation does not ring true. As Daniels pointed out in his testimony, respondent had filed an answer in the fraudulent conveyance action the day before the closing. Therefore, respondent knew or should have known that the statements in the affidavit were false. Respondent's conduct in this regard violated RPC 3.4(b) and RPC 8.4(c).

The fourth count charged respondent with aiding and abetting his clients in a campaign to transfer all marital assets from Gordon to Evelyn, in an attempt to thwart Stornawaye's attempt to collect on its judgment. The complaint alleged that respondent (1) assisted in the fraudulent transfer of the marital home and the transfer of Ash Construction Ltd. to Evelyn; (2) failed to disclose Gordon's false deposition testimony; (3) failed to acknowledge his awareness of Stornawaye's judgment against Gordon and the filing of the notice of lis pendens in his answer to the complaint and "proposed order to show cause;" (4) assisted Evelyn in transferring the marital home to an innocent purchaser one day after he sent the answer to the complaint to the court clerk for filing; and (5) prepared a false affidavit of title in that real estate transaction. The complaint charged respondent with a violation of RPC 8.4(c). The evidence presented established only that respondent assisted in improperly transferring the marital home to Evelyn and then to the Langers. Although respondent testified that he believed that the statute of limitations had run in the fraudulent conveyance action and that Evelyn owned the house free and clear, the litigation was still pending. Therefore, the sale should not have taken place.

We found no clear and convincing evidence, however, that Gordon transferred his interest in Ash Construction Ltd. to Evelyn in order to thwart collection on the judgment against Gordon.

Similarly, the remaining allegations were not proven to a clear and convincing standard. In fact, as to respondent's knowledge of the notice of lis pendens, the evidence

established that Daniels did not send a copy of it to respondent. Daniel's testimony that Stornaway may have sent respondent a letter indicating that a notice of lis pendens had been filed does not establish to a clear and convincing standard that respondent had actual notice.

Finally, there was no evidence that either respondent's answer or his reply to an order to show cause contained false statements. The only proven charges were, thus, the transfers of the property and the preparation and filing of the false affidavit of title.

The final count also charged respondent with a violation of RPC 8.4(c), instead of RPC 8.1(b) (failing to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter or knowingly failing to respond to a lawful demand for information from a disciplinary authority), in that he attempted to mislead the DEC investigator by omitting information about his relationship with the Ashes and his actions during the course of his representation of their interests. There is no evidence in the record that respondent intended to mislead the investigator. We, therefore, dismissed that charge.

Discipline in cases involving fraud or misrepresentation spans a broad range, depending on the circumstances of the case and the presence of mitigating factors. See In re Lewis, 138 N.J. 33 (1994) (admonition where attorney attempted to deceive a court by introducing into evidence a document falsely showing that a heating problem in an apartment in 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

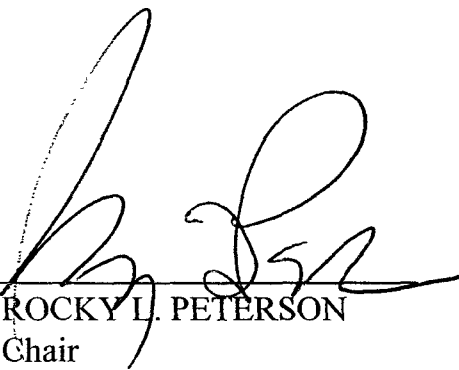
statement of material fact in a brief submitted to a trial judge; attorney had been previously disciplined); In re Johnson, 102 N.J. 504 (1986) (three-month suspension where attorney misrepresented to a trial judge that his associate was ill in order to obtain an adjournment of a trial); In re Kernan, 118 N.J. 361 (1990) (three-month suspension for filing a false certification in attorney's own matrimonial matter); In re Forrest, 158 N.J. 428 (1999) (six-month suspension where attorney failed to disclose that his client had passed away, in an effort to obtain settlement of deceased client's civil action) and In re Labendz, 95 N.J. 273 (1984) (one-year suspension where attorney submitted a false mortgage application to a bank to obtain a higher mortgage loan for his client).

Here, respondent's conduct violated RPC 3.4(b) and 8.4(c). He assisted his client, Gordon Ash, in the transfer of the marital home to Evelyn Ash, in an attempt to prevent Stornaway from collecting on its judgment. Thereafter, respondent assisted in the improper sale of the house to innocent purchasers and also prepared and had Evelyn sign a false affidavit of title in connection with the sale.

While respondent's conduct was certainly serious, the mitigating factors in this case are compelling. Respondent has had an otherwise unblemished career for some forty-two years; he cooperated with the ethics authorities; he derived no personal gain from his actions; he willingly turned over the case to another attorney, once he realized his misconduct; he readily acknowledged his wrongdoing; and he purportedly has given up his private practice, other than his limited commitment to the West Caldwell Planning Board.

Based on the above circumstances, we have unanimously determined to impose only a reprimand, conditioned on respondent's submission of an affidavit to us attesting that, once his commitment to the West Caldwell Planning Board has expired at the end of this year, he will no longer engage in the practice of law. Absent respondent's assurances of his retirement, we would have imposed a three-month suspension. Three members did not participate.

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

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board

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

In the Matter of Ronald Reichstein
Docket No. DRB 01-261

Argued: October 18, 2001

Decided: February 14, 2002

Disposition: Reprimand

<i>Members</i>	<i>Disbar</i>	<i>Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Peterson</i>			X				
<i>Maudsley</i>			X				
<i>Boylan</i>							X
<i>Brody</i>			X				
<i>Lolla</i>			X				
<i>O'Shaughnessy</i>			X				
<i>Pashman</i>							X
<i>Schwartz</i>							X
<i>Wissinger</i>			X				
Total:			6				3

Robyn M. Hill 2/28/02
Robyn M. Hill
Chief Counsel