SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-179
District Docket No. XIV-08-155E

IN THE MATTER OF	
GLENN RANDALL	
AN ATTORNEY AT LAW	

Corrected
Decision

Argued: September 18, 2008

Decided: October 29, 2008

Walton W. Kingsbery, III, appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance.

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

This matter came before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), based on respondent's one-year-and-a-day suspension in Pennsylvania for making false statements in letters to a Pennsylvania district attorney regarding escrow funds he allegedly held on behalf of a

client. The OAE recommends a one-year suspension. We determine to impose a one-year suspension, retroactive to March 28, 2008, the date of respondent's suspension in Pennsylvania.

Respondent was admitted to the New Jersey and the Pennsylvania bars in 1998. He has no prior discipline.

In September 2006, the Pennsylvania Office of Board Counsel filed a complaint charging respondent with signing false statements, misrepresenting information to third parties, and failing to honor a subpoena. After respondent filed an answer, the parties entered into a November 6, 2006 Joint Stipulation of Facts and Law. At a September 8, 2006 hearing, respondent stipulated to having violated RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

The facts that gave rise to this matter are as follows:

On December 20, 2002, Robert Anderson, as buyer, gave a real estate broker and the seller of property, James Zinkand, a $24,750.00 downpayment for the purchase of Zinkand's property in Flourtown, Pennsylvania ("the Flourtown property"). On January 8, 2003, Anderson paid Zinkand an additional $1,000 deposit, bringing the total deposit amount to $25,750.

Anderson understood that Zinkand would place his downpayment in an escrow account. At settlement, the funds would be applied to the Flourtown purchase.

Instead of placing the funds in an escrow account, Zinkand deposited the $25,750 into his personal account at Roxborough Manayunk Bank. He thereafter failed to account for the funds.

The Flourtown settlement never took place. Anderson then sued Zinkand for the return of his down payment. In addition, on March 14, 2005, the Montgomery County District Attorney's Office filed criminal charges against Zinkand for his failure to return Anderson's funds.

Respondent, a non-practicing attorney, knew Zinkand. Zinkand had referred business to respondent's title company. When Zinkand approached respondent for a favor, in 2004, respondent agreed to help him.

Zinkand then prepared, and respondent signed, a December 15, 2004 letter addressed to "Whom It May Concern." The letter stated:

> A. Zinkand "has asked me" to take control of funds in the amount of $25,750.00 plus accrued interest as part of a transaction with Robert Anderson;
>
> B. "the current verified balance with Citizens Bank in

account no. 6244-409766 is a total of $26,735.43"; and

C. Zinkand "has given me sole and exclusive control" over the funds as "escrow agent" for the funds.

[OAEbEx.A.][1]

At the time, respondent held no funds for Zinkand in escrow or as an escrow agent.

Zinkand then drafted a second letter for respondent, dated December 17, 2004, which respondent signed and sent to the Montgomery County Assistant District Attorney. That letter stated that

a. [respondent] had been contacted by James Zinkand who requested that he keep in his escrow account funds totaling $25,750.00; and

b. such funds were being held with regard to 'a criminal matter' and 'shall be held indefinitely' by Respondent's company Lexington & Concord Search and Abstract title company, until such time as the case 'is finalized.'

[OAEbEx.A¶15.]

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[1] "OAEb" refers to the OAE's brief in support of the motion for reciprocal discipline.

As of the date of the letter, respondent was not holding any funds for Zinkand on account of the Flourtown transaction.

Relying on respondent's representations in the letter and under the mistaken belief that the downpayment funds were secure, the district attorney withdrew the criminal charges against Zinkand.

On January 31, 2005, respondent wrote a letter to Anderson's attorney, claiming that his involvement in the case had been strictly as that of an "escrow agent". At about that time, respondent was served with a subpoena to attend and testify, a request for the production of documents, and a notice scheduling his deposition for February 3, 2005.

At a February 3, 2005 deposition, respondent admitted, for the first time, that he had never received any funds from Zinkand and that, although he had received some bank documents from Zinkand concerning an account at Citizen's Bank, he had never had control of the funds in that account. Respondent further testified that he had not retained "copies of anything he signed at Citizen's Bank and that he had never received any paperwork from Citizen's Bank".

After respondent's deposition, Anderson's attorney notified the Montgomery County District Attorney that respondent had not

escrowed the funds, as he had represented to that office. Criminal charges were then re-filed against Zinkand.

Respondent acknowledged, in the stipulation, that his statement that he was an "escrow agent" was false and that he knew that the funds were in an account over which he had no control.

On February 23, 2005, the Honorable Deborah Lukens issued a subpoena requiring respondent's attendance at a March 2, 2005 preliminary hearing in the criminal matter. Respondent failed to attend that hearing, despite having received the subpoena.

According to the Pennsylvania disciplinary authorities, respondent thereafter gave several conflicting reasons for his absence from the preliminary hearing, including that a) he had been too busy to attend; b) a title underwriter had scheduled a last-minute audit for that day; and c) he had set out to attend, but had turned back due to heavy traffic.

The Pennsylvania disciplinary committee found respondent guilty of the stipulated violations (RPC 8.4(c) and RPC 8.4(d)), as

well as a violation of RPC 7.1(a) (making a false and misleading communication about the lawyer's services).[2]

In an October 23, 2007 report, the Pennsylvania Disciplinary Board concurred with the committee's findings and recommended that respondent be suspended for one year and a day. The Pennsylvania Board considered, in aggravation, that respondent had not been completely candid with both the hearing committee and the Disciplinary Board and that he had not voluntarily disclosed his wrongdoing to them.

On February 27, 2008, the Supreme Court of Pennsylvania agreed with the Board's findings and issued an order suspending respondent for one year and a day.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline.

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a) (4), which provides that

> The Board shall recommend imposition of the identical action or discipline unless the Respondent demonstrates, or the Board finds on the face of the record upon which the discipline in another jurisdiction was predicated that it clearly appears that:

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[2] In New Jersey, RPC 7.1(a) addresses communications related to attorney advertising, which is not the case here.

> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the Respondent;
>
> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
>
> (D) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (E).

In New Jersey, similar misconduct has been met with a one-year suspension. See, e.g., In re Simmonds, 180 N.J. 303 (2004) (one-year suspension imposed in a reciprocal discipline case, where the attorney complied with a client's request that he represent the buyer in the sale of the client's house; the buyer was to procure funds through a loan from lender Parkway; the attorney permitted the client/seller to write, sign, and submit a letter to Parkway under the attorney's name, misrepresenting that the attorney held buyer escrow funds for the purchase; when

Parkway asked the attorney for a letter verifying the status of the escrow funds, the client prepared a second letter, which the attorney signed and sent to Parkway; the letter falsely stated that the attorney held $67,000 in his trust account on behalf of the buyer; mitigation included that the attorney was not charged with a crime and did not act out of self-interest) and In re Labendz, 95 N.J. 273 (1984) (one-year suspension for attorney who knowingly submitted a RESPA statement containing an inflated purchase price so that the buyer could obtain a higher mortgage; in imposing the suspension, the Court noted that it was the attorney's only instance of misconduct, that no one was harmed, and that he received no personal benefit from the transaction.)

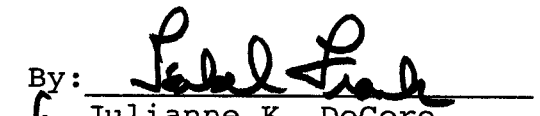
Lengthier suspensions have been imposed where attorneys have been convicted of crimes arising out of real estate transactions. See, e.g., In re Capone, 147 N.J. 590 (1997) (two-year suspension for attorney who sought to purchase real estate with a contract price of $600,000; thereafter, he applied to a bank for a $480,000 mortgage loan, which represented eighty percent of the $600,000 contract price; one month later, the attorney negotiated a $125,000 reduction in the purchase price, which he did not disclose to the bank; rather, he continued to submit documents that listed a $600,000 purchase price; the bank

approved the loan, based on the misrepresentations contained in the documents; the attorney ultimately defaulted on the loan and pleaded guilty to knowingly making a false statement on a loan application) and In re Bateman, 132 N.J. 297 (1993) (two-year suspension imposed after attorney's conviction for conspiracy to commit mail fraud and making false statements on a loan application in order to assist a client in obtaining an inflated appraisal value on the property).

Here, respondent acted in a manner similar to the attorneys in Simmonds (one-year suspension in reciprocal discipline matter) and LaBendz (one-year suspension). Similar mitigation is present as well – the attorneys were not charged with crimes and did not act for their own benefit. We, therefore, determine that respondent should be reciprocally suspended for one year, the suspension to be retroactive to his March 28, 2008 Pennsylvania suspension. We also determine to condition respondent's reinstatement in New Jersey on his reinstatement in Pennsylvania.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

By: 
for Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Glenn Randall
Docket No. DRB 08-179

Argued: September 18, 2008

Decided: October 29, 2008

Disposition: One-year retroactive suspension

Members	Disbar	One-year Retroactive Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Boylan		X				
Clark		X				
Doremus		X				
Lolla		X				
Stanton		X				
Wissinger		X				
Total:		9				

Julianne K. DeCore
Chief Counsel