SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-344
(formerly 04-022)
District Docket No. IIB-04-012E
(formerly IIB-02-030E)

IN THE MATTER OF	:
	:
JAMES O. ROBERSON	:
	:
AN ATTORNEY AT LAW	:

Decision

Argued: February 16, 2006

Decided: March 23, 2006

Salvatore Giampiccolo appeared on behalf of the District IIB Ethics Committee.

Emil Cuccio 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 on a recommendation for discipline filed by the District IIB Ethics Committee ("DEC"). We first considered this matter as a default at our March 2004 session, at which time we voted to vacate the default and remand

the case for a hearing, after determining that service of process had been improper.

A two-count complaint charged respondent with gross neglect (RPC 1.1(a)), failure to communicate with the client (RPC 1.4(a) and (b)), [mistakenly charged as RPC 4.1(a) and RPC 4(b)], excessive fees (RPC 1.5(a)), failure to cooperate with disciplinary authorities (RPC 8.1(b)), and conduct involving dishonesty, fraud, deceit or misrepresentation (RPC 8.4(c)).[1]

Respondent filed an answer pro se in this matter. Thereafter, he was appointed counsel, who also filed an answer on his behalf. Both answers are in the record.

Respondent was admitted to the New Jersey bar in 1986 and to the New York bar in 1987. He was temporarily suspended in New Jersey in April 2002, based on his lack of cooperation with the Office of Attorney Ethics' ("OAE") investigation into his failure to pay off a mortgage in full, failure to account for the funds, and failure to comply with two prior Orders, directing that he cooperate with the OAE. In re Roberson, 172 N.J. 30 (2002). He remains suspended. In addition, he has been ineligible to practice law since September 2001, for failure to

[1] The complaint does not specify a section of RPC 8.4, but states: "Respondents [sic] acts of dishonesty, fraud and misrepresentation in illegally notarizing the Corson's [sic] signatures and doctoring documents is [sic] in violation of RPC 8.4." Presumably RPC 8.4(c) was intended, rather than RPC 8.4(b), despite the use of the word "illegally."

pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. He no longer lives in New Jersey.

Respondent had a professional relationship with Spiro Pollatos, a mortgage banker connected with Investors Mortgage. Respondent's involvement in the within matter grew out of that relationship. As seen below, among other improprieties, respondent represented both the mortgage company and the borrowers in a loan transaction.

In May 1999, James and Linnea Corson entered into an arrangement with Investors Mortgage to refinance their mortgage loan at what they believed to be a fifteen-year term, with a fixed interest rate of 6.8%.[2] They did not receive a loan commitment letter. On July 2, 1999, Pollatos, as an agent from Investors Mortgage, conducted the closing at the Corsons' home. Respondent did not attend the closing. As detailed below, the Corsons did not know that respondent was representing them and, in fact, stated that they never met or even spoke with respondent.

According to the Corsons, the closing documents had "[a] lot of blank spaces." When they asked Pollatos about the

[2] The Corsons testified by telephone below because they were too ill to travel to the DEC hearing.

missing information in the documents, he assured them that "it would be clarified."

Approximately one week after the Corsons' closing, they received a copy of the closing documents, which reflected an interest rate of 9.625%, rather than 6.8%, and a term of thirty years, rather than fifteen. In addition, the closing documents were dated June 30, 1999, notwithstanding that the closing had occurred on July 2, 1999.

Mrs. Corson acknowledged that her signature was on the closing documents. Mr. Corson, however, denied having signed a number of the documents. Mrs. Corson confi rmed that the signature on several of the documents was not her husband's. She was unable to explain why she had signed all the papers and her husband had not. Of note is exhibit G, the Uniform Residential Loan Application, where Mr. Corson's name is misspelled "Corsin," and exhibit K, the Notice of Right to Cancel, where his name is also misspelled.

The day after the closing, the Corsons tried to rescind the transaction, apparently because they had not received copies of the closing documents. Their attempt was to no avail. After they received a copy of the closing documents and discovered the discrepancies between the documents and the terms of the loan,

they tried, without success, to cancel the refinancing by sending two additional letters to Investors Mortgage.

Exhibit K is the notice of right to cancel the transaction. That document states that the Corsons may cancel the transaction within three business days from the date of the transaction, the date they received the truth-in-lending disclosures, or the date they received the notice of right to cancel, whichever is later.[3] The Corsons' signatures appear in two places on the form. First, they acknowledged their receipt of two copies of the form. Those signatures are dated June 30, 1999. Their signatures appear a second time, under the heading: "DO NOT SIGN UNTIL THREE BUSINESS DAYS HAVE ELAPSED." The document states that three business days have elapsed since the undersigned [the Corsons] received two copies of the document. By their signatures they certified that they had not exercised any right to rescind the transaction, had no desire to do so, and ratified and confirmed the transaction in all respects. Those signatures were dated July 3, 1999, and, as noted earlier, Mr. Corson's name was misspelled. The Corsons' signatures on the notice of rescission form, in effect, eliminated their opportunity to cancel the transaction.

[3] The date of the transaction noted on the form is June 30, 1999.

Respondent testified that he had developed a professional relationship with Pollatos, who would refer mortgage loans to him, including the Corsons'. There are no allegations that respondent paid Pollatos any referral fees. Respondent stated that he had handled 150 transactions for Investors. He considered himself as the attorney for Investors, as well as the attorney for the Corsons. Indeed, the HUD-1 Uniform Settlement Statement bears his name as the settlement agent.

According to respondent, the Corsons did not appear on their originally scheduled closing date, in late May 1999, and the closing was rescheduled. Mr. Corson, however, testified that there was no closing scheduled in mid-June 1999. He was not asked about a late-May closing. On the closing date, the Corsons, who are disabled, were unable to travel to respondent's office. According to respondent, to accommodate the Corsons, he sent Pollatos to their home to have them execute the loan documents.[4] Respondent paid Pollatos $350 for attending the closing. Pollatos then brought the signed closing documents to respondent.

Respondent claimed that he was unaware that the loan rate on the note was not the rate to which the Corsons had agreed.

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[4] Although respondent's conduct raises the specter that he might have aided Pollatos in the unauthorized practice of law, this violation was neither charged in the complaint nor litigated below. Thus, we make no findings in this regard.

The signatures on the documents matched those on copies of the Corsons' photo IDs, which Pollatos had provided. Respondent did not notice the misspellings of "Corson" or the incorrect dates. He thought it possible that the Corsons were supposed to close on June 30, 1999, failed to appear, and did not close until July 2, 1999. Respondent admitted that the purported date of the execution of the documents affected the Corsons' right to rescind the loan. Respondent signed the note as a witness and took the acknowledgment on the mortgage as having been signed in his presence. He then forwarded the closing package to the bank the same day. He ultimately deducted $1,475 from the Corsons' funds for his fee and costs, paid off the Corsons' existing mortgages, and sent them a check for over $16,000.

In November 1999, respondent received a call from an attorney for the Corsons. In reviewing the matter, the attorney noticed that the mortgage had not been sent for recording. Respondent recorded the mortgage after his dereliction was brought to his attention.

According to the Corsons, throughout the refinancing process they never met with, spoke to or retained respondent, and did not know of his involvement until they saw his name on a closing document. They contended that the mortgage closing had been scheduled by a representative of the mortgage company. Mr.

Corson tried to reach respondent after the closing, to no avail. Respondent, however, asserted that he spoke with the Corsons twice about scheduling the closing. Respondent also denied that Mr. Corson had tried to contact him.

Respondent testified that, in this type of transaction, he considered the lender to be his primary responsibility, because the lenders "determined whether or not you could work for them." He stated that "getting the bank approval was always the paramount concern . . . ." As noted above, respondent considered that, in this transaction, his clients were both the bank and the Corsons.

According to respondent, in this type of matter, his fee was contingent on the closing of title. The lender prepared the mortgage documents for the Corsons' transaction and then forwarded them to him for review.[5] He then prepared the HUD-1 and the affidavit of title. When the closing was rescheduled, he had to re-examine and update the documents. The HUD-1 he prepared lists a "Settlement or closing fee" of $350. That money went to him, although that is not indicated on the form. Respondent stated that "this additional fee was basically my way to rework my time that had been lost for them standing me up."

[5] Respondent did not recall if there was a loan commitment in the Corsons' file, when he received it.

When respondent was asked about an additional charge of $295 for the title examination, he testified:

> The fees that I charged this client in my mind were justified and broken down in a format that I thought was convenient so that I could, I could get paid for the amount of work that I did. I, in essence, did two closings for this gentleman except for short of two closings, the first time in May and the second time in, let's say, June 30th or July 2nd, whichever date is actual.
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> But the amount of work that was necessary, the total fees were broken down in terms of the other fees for the first closing that I didn't get paid for that he never called and even had courtesy [sic] to say that he wasn't coming. Those fees ended up getting broken down on the other — you know, the other breakdown, the 350 and the 295.
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> . . . .
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> It wasn't, you know, when you go to the — I find that no different than the other professions. I don't find that different that there's a little base, and then they have little, what they call 'nickel and dime,' and they add up to what the total fee is.
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> [T193-24 to T195-17.][6]

With regard to additional fees reflected on the HUD-1, respondent testified that he charged "estimated" or "projected" amounts for other costs, which apparently did not necessarily reflect the actual costs incurred.

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[6] T refers to the transcript of the DEC hearing on January 7, 2005.

Ultimately, a fee arbitration proceeding resulted in a determination for respondent's return of most of the fee paid by the Corsons. Specifically, he was directed to refund $1,360 of the $1,475 paid to him. As of the date of the DEC hearing, he was repaying the money in installments.

Count one of the complaint charged respondent with having violated RPC 1.1(a), RPC 1.4(a) and (b), RPC 1.5(a), and RPC 8.4(c).

Count two of the complaint charged that respondent violated RPC 8.1(b) by failing to reply to the DEC's requests for information about the grievance. There is scant testimony on this issue. Essentially, respondent testified that he received one letter from the DEC investigator, to which he replied. He did not make further inquiry about the status of the investigation. He deemed it "frivolous" and was waiting to hear from the DEC. He filed a motion to vacate the initial default because the complaint had been mailed to an incorrect address.[7]

The DEC found that respondent abandoned the Corsons by sending Pollatos as his representative to close the loan, knowing that Pollatos, as the mortgage banker, had a conflict of interest with the Corsons. Respondent neglected to obtain a mortgage commitment for the Corsons, thus failing to preserve

[7] As noted above, this matter was remanded to the DEC after we determined that there had been improper service of the complaint.

their negotiated interest rate. He gave them no legal advice and allowed them to execute blank documents, committing them to a higher interest rate. The DEC further found that respondent failed to communicate with the Corsons both before and after the closing, failed to timely provide them with copies of their loan documents, and failed to protect their right to rescind the transaction. Respondent also charged the Corsons an excessive fee by inflating the cost of recording charges, postage, and courier fees. Finally, with regard to the improper jurat, the DEC stated:

> [Respondent] signed a fraudulent acknowledgment on the Mortgage when he did not personally witness their signature on the Mortgage or Note in violation of RPC 8.4(c) thus filing falsely prepared documents in fraud of Corson and the ultimate lender. The evidence of his omissions and co-missions was clear and convincing and the panel so found.
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> [HPR9.][8]

The DEC found that respondent violated RPC 1.1(a), RPC 1.4(a) and (b) [incorrectly cited as 4.1(a) and 4(b)], RPC 1.5(a), and RPC 8.4(c). The DEC recommended that respondent receive a six-month suspension.

Upon a de novo review of the record, we are satisfied that the conclusion of the DEC that respondent was guilty of

[8] HPR refers to the hearing panel report, dated November 3, 2005.

unethical conduct is fully supported by clear and convincing evidence.

We determine that respondent violated each of the Rules of Professional Conduct cited in the complaint, with one exception. The DEC made no mention of RPC 8.1(b) in its report. There was no evidence introduced below to support a finding that respondent violated that rule. We, therefore, dismiss this charged violation for lack of clear and convincing evidence. The remaining violations of RPC 1.1(a), RPC 1.4(a) and (b), RPC 1.5(a), and RPC 8.4(c) have all been proven.

The complaint charged that "Respondent's acts of dishonesty, fraud and misrepresentation in illegally notarizing the Corson's [sic] signatures and **doctoring documents** is in violation of RPC 8.4" (emphasis added). We find no basis in this record to conclude that respondent, rather than Pollatos, was responsible for the forged signatures. Our finding that respondent violated RPC 8.4(c) is only based on respondent's improper jurat; he failed to see the Corsons sign the closing documents, but witnessed their signatures.

The discipline in cases dealing with the improper execution of jurats, without more, is ordinarily an admonition or a reprimand. When the attorney witnesses and notarizes a document that has not been signed in his or her presence, but is signed

by the legitimate party, the discipline is usually an admonition. If there are aggravating factors, such as the attorney's personal stake in the transaction, or the direction that a secretary sign the party's name on a document that the attorney then notarizes, or a pattern of practice, the appropriate discipline is a reprimand. See, e.g., In re Giusti, 147 N.J. 265 (1997) (reprimand where the attorney forged the signature of his client on a medical record release form; the attorney then forged the signature of a notary public and used the notary's seal); In re Rinaldo, 86 N.J. 640 (1981) (public reprimand where an attorney permitted his secretaries to sign two affidavits and a certification in lieu of oath, in violation of R. 1:4-5 and R. 1:4-8); and In re Conti, 75 N.J. 114 (1977) (public reprimand where the attorney's clients told his secretary that it was impossible for them to come to the attorney's office to sign a deed and instructed her to do "whatever had to be done" to record the deed; the attorney had the secretary sign the clients' names on the deed; he then witnessed the signatures and took the acknowledgement).

Where the improper acknowledgment is accompanied by other unethical conduct, the discipline is more severe. In In re Just, 140 N.J. 319 (1995), the Court imposed a three-month suspension where the attorney facilitated a conveyance that was

questionable because of the grantor's apparent lack of competence and affixed a jurat to a signature he did not witness; the grantor was hospitalized at the time and the attorney took no steps to ascertain from hospital personnel the physical and/or mental capacity of the grantor. Harsher discipline resulted in In re Surgent, 79 N.J. 529 (1979). In that case, the attorney received a six-month suspension for taking an improper jurat for various clients who had signed a verified complaint and affidavits filed with the court. In addition, he entangled his personal business relationship with clients and acted as the attorney for a corporation in the same area of law in which he later acted against the corporation. In another serious case, In re Friedman, 106 N.J. 1 (1987), the attorney entered a guilty plea to three counts of falsifying records for improperly affixing his jurat to three affidavits subsequently submitted to an insurance company. The Court found that the attorney's conduct had not been an aberrational act done with the purpose of benefiting a client, but a pattern of practice that would undoubtedly have continued, if not for the criminal prosecution. In that case, the Court's resolution was "time served" (the attorney had been temporarily suspended for more than one year).

Similarly, if respondent's sole dereliction had been his violation of RPC 1.1(a), based on his failure to record the mortgage, the appropriate discipline would have ranged from an admonition to a reprimand. See, e.g., In the Matter of Thomas S. Capron, Docket No. DRB 04-294 (October 25, 2004) (admonition for failure to discharge a mortgage of record for eight years; gross neglect found); In the Matter of Diane K. Murray, Docket No. DRB 98-342 (September 26, 2000) (admonition for failure to record a deed and to obtain title insurance for fifteen months and two and a half years after the closing, respectively; the attorney also failed to reply to the client's numerous requests for information about the matter and to reconcile her trust account records in a timely fashion; the attorney violated RPC 1.1(a), RPC 1.3, RPC 1.4(a), and RPC 1.15(d)); In the Matter of Charles Deubel, III, Docket No. DRB 95-051 (May 16, 1995) (admonition for failure to record a deed for fifteen months after the closing of title, a violation of RPC 1.3); In the Matter of Laura P. Scott, Docket No. DRB 96-091 (May 2, 1996) (admonition for attorney who did not remit certain fees to the title company and to the mortgage company until six months after the closing; the attorney also failed to reply to her clients' numerous requests for information on potential unpaid closing costs and to deposit $500 in cash into either her trust account or her business account, from which

the closing proceeds would then be disbursed; finally, the attorney did not submit to her clients proof of $97 in "reimbursement for costs/fees," and did not reimburse them for that amount; the attorney violated RPC 1.3, RPC 1.4(a), RPC 1.15(b), and RPC 1.15(d)); In re Jodha, 174 N.J. 407 (2002) (reprimand for attorney who did not promptly complete post-closing procedures; the attorney did not record the deed, pay the title insurance premium, pay the real estate taxes or refund escrow funds to his client until nine to twenty months after the closing; the attorney also failed to correct accounting deficiencies noted during a 1998 random audit by the OAE); and In re Mandle, Jr., 167 N.J. 609 (2001) (reprimand for attorney who, while practicing law under the supervision of a proctor, failed to represent a client diligently by not recording a deed and a mortgage for five months after the closing and not properly disbursing the closing funds, instead allowing them to remain stagnant in his trust account; the attorney also failed to cooperate with the investigation of the ethics matter; the attorney had received two prior reprimands for conduct that included gross neglect, pattern of neglect, lack of diligence, failure to cooperate with disciplinary authorities, and failure to communicate with a client).

If respondent's misconduct had been limited to his failure to record the mortgage and his taking of the improper jurat, each alone meriting an admonition or a reprimand, a censure would have been appropriate. Those two violations standing alone would not, in the absence of aggravating factors, such as other unethical conduct, warrant a suspension. When respondent's complete disregard of his obligations to the Corsons is added to the mix, however, stronger discipline is warranted. Although it is true that the Corsons were unaware that respondent was representing them, once he undertook to act as their attorney and collected a legal fee from them, he was ethically obligated to protect their interests. He also failed to communicate with them to ensure that they understood the mortgage terms by which they were bound. Respondent was clearly seeking to ensure that the mortgage company, which sent him work, was satisfied with his services, to the detriment of a disabled couple, whose interests needed to be safeguarded. Parenthetically, respondent also violated his fiduciary duty to the mortgage company because he allowed the transaction to proceed with what were not authentic signatures. Without Mr. Corson's signature, the loan document was not properly secured by a mortgage on the property, whose title was also in Mr. Corson's name.

Even if respondent played no role in the deception visited on the Corsons by the alteration of the mortgage terms, his review of the closing documents should have alerted him that something was amiss when names were misspelled and dates were inaccurate. Moreover, respondent improperly inflated his fees, purportedly to compensate for work performed for an alleged aborted first closing.

The only issue left is the appropriate degree of discipline for respondent's overall conduct. As in In re Just, supra, 140 N.J. 319, where the attorney received a three-month suspension for an improper jurat that was utilized to facilitate a fraudulent conveyance, respondent's improper jurat was utilized to the detriment of the Corsons in their transaction with the bank. Respondent's conduct was more serious than that of the attorney in Just, however, because of the additional elements of the unrecorded mortgage, his excessive fees, and the gross neglect of his responsibilities to his clients.[9] Aggravating factors are his failure to acknowledge the extent of his wrongdoing and his lack of remorse for his actions.

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[9] Respondent was not charged with a conflict of interest based on his representation of mortgagor and mortgagee without obtaining a waiver of the conflict. See N.J. Advisory Comm. on Professional Ethics Opinion 243, 95 N.J.L.J. 1145 (1972). We decline to reach this issue because a finding of a violation in this regard would not, in any event, increase the appropriate level of discipline in this matter.

After considering respondent's serious ethics offenses and the aggravating circumstances present in this case, we determine that respondent should be suspended for six months. Member Lolla 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 James O. Roberson
Docket No. DRB 05-344

Argued: February 16, 2006

Decided: March 23, 2006

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
Neuwirth	X				
Pashman	X				
Stanton	X				
Wissinger	X				
Total:	8				1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel