SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-118

IN THE MATTER OF

STEVEN ADLER

AN ATTORNEY AT LAW

Decision

Argued: May 15, 2003

Decided: July 15, 2003

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

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 motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), based on respondent's one-year suspension in the State of New York.

Respondent was admitted to the New Jersey bar in 1973. He has no history of discipline in New Jersey.

On February 22, 2001, respondent entered a guilty plea in Monticello Village Court, Sullivan County, New York to the class A misdemeanor of offering a false instrument for filing in the second degree, in violation of New York Penal Law §175.30. He received a conditional discharge and was ordered to pay restitution of $9,200. On February 4, 2003, the Supreme Court of New York, Appellate Division, First Judicial Department suspended respondent for one year, effective March 6, 2003.

The hearing panel report and recommendation, dated May 29, 2002, set forth the following facts:

> Respondent's criminal conviction arose out of his representation of Joel Brenner, Esq., in a real estate transaction involving property in Narrowsburg, New York. In September 1998, Thomas and Rita Garde agreed to transfer to Mr. Brenner a vacant lot valued at $25,000, located next to their house, instead of paying him cash for the legal fees they owed him for representing their son. Mr. Brenner retained respondent to handle the transfer, and Mr. and Mrs. Garde retained Jacoby ('Jay') Epstein, Esq.
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> On or about October 7, 1998, Mr. Epstein sent respondent a Bargain and Sale Deed which had been signed by Josephine G. Gerrity, Rita Garde's sister, together with a Real Estate Property and Transfer Tax form and another form. Mr. Epstein asked respondent to file the deed and related documents.
>
> Respondent ordered a title report, and when he received it, he noticed that the lot that the Gardes transferred to his client was 112 feet wide, while the title report showed only one large lot, 212 feet wide. Respondent sought an explanation for the apparent discrepancy from Mr. Epstein, who responded in late 1998 by sending respondent a photocopy of a survey drawing showing two lots, the one with the house on it and the vacant one, which had been deeded to Mr. Brenner.

Early in January 1999, the title insurance agent, Edward Dunleavy, informed respondent that Thomas Garde had died on December 4, 1998. Respondent received a letter dated July 15, 1999 from Doreen Dial, one of the adult Garde children who also had power of attorney for her parents. Ms. Dial stated in the letter that Mr. Brenner had written her a letter stating that the deed had not yet been filed because the property was never legally subdivided. Ms. Dial stated in her letter that she had spoken to the Sullivan County Tax Map Supervisor, Dave Catizone, who told her that the property had been legally subdivided in 1982, and that there was [sic] two tax lots under her parents' name on file with the Sullivan County Records Department. Ms. Dial further stated that neither she nor her attorney, Mr. Epstein, would provide further documentation. Respondent testified that he had called Mr. Catizone twice without reaching him, and did not follow up.

Respondent testified that in mid-July 1999, he received a copy of a tax map from Bill Reiger, a broker and friend of respondent's, showing two separate parcels, one of 100 foot width and that [sic] other of 112 foot width, which meant that the town was acknowledging two separate parcels. Based on that information, respondent testified that he and his client decided to move ahead with the transaction. Respondent admitted on cross examination that he could have gotten the tax map himself in the beginning and would have seen that the town was treating the property as two separate parcels. But he testified that he did not think to do that.

Respondent testified that in approximately October 1999, Mr. Epstein had advised he would not do anymore work on the matter. Respondent also testified that in October 1999, Mr. Dunleavy, the president of the title company, wrote respondent a letter that the deed would have to recite that Rita Garde was the sole grantor as the surviving tenant by the entirety, and also that now they would need an affirmation that the power of attorney was still in effect, because so much time had passed.

In December 1999, respondent testified, a buyer named Cary Gries was found for the property that the Gardes had transferred to Mr. Brenner, and Mr. Brenner asked respondent to handle this transaction of Brenner to Gries, as well. Respondent prepared a contract of sale reflecting a purchase price of $19,000 for the vacant lot, which was signed and returned to respondent.

Respondent testified that in February, March 2000, he decided to 'streamline the transaction,' and decided to draw up a deed showing the vacant lot going directly from Rita Garde to Cary Gries, but the proceeds of $19,000 would still go directly to Mr. Brenner. Respondent testified that he informed

Mr. Dunleavy and Mr. Gries's attorney, Jordan Barness, of his intention, and they both agreed.

Respondent testified that he drafted a revised deed transferring the vacant lot from Rita Garde to Cary Gries, which he admitted 'technically' created a transaction that did not exist. Respondent testified that he felt 'frustrated' that this deal had been 'incredibly complicated for a small transaction,' and had gone on 'an inordinately long period of time.' He decided to sign Josephine Gerrity's name to the new deed to 'short circuit the whole process,' thereby helping his client and the purchaser by speeding things up. After signing Ms. Gerrity's name, he notarized the signature. Respondent also forged Ms. Gerrity's name on the real property and real estate transfer tax return. At the end of March 2000, respondent sent the deed and other documents to Mr. Dunleavy for recording, which he did.

Respondent testified that, at the time, he knew that what he was doing was wrong, but did it anyway for convenience sake. Although respondent testified that he thought 'nobody would get hurt', he also acknowledged that he knew a forged deed did not validly transfer property, and that it created a problem for any subsequent purchaser or seller of the property. Finally, respondent admitted that he lied to cover up his misconduct in a letter to Mr. Dunleavy dated March 29, 2000.

[Exhibit D at 3-7, references to the record deleted]

According to the hearing panel report, Rita Garde's health deteriorated in 1999. In April 2000, she was placed in a nursing home and filed an application for Medicaid. Her family arranged for her to undergo a surgical procedure in mid-May, related to her dialysis treatments. Because she was not determined to be eligible for Medicaid until the end of June, the procedure was postponed until July. In the meantime, she developed an infection, requiring additional medical treatment. The Medicaid eligibility process was delayed because public records reflected that the Gardes had sold the property to Gries in exchange for $19,000, well above the Medicaid eligibility limit.

The hearing panel assessed the aggravating and mitigating factors as follows:

Among the mitigating factors are the following: Respondent has had no prior discipline. His three character witnesses testified that he has been highly regarded in his professional circles and has a solid reputation for honesty, integrity and trustworthiness. Further respondent has cooperated in these proceedings and has freely admitted his wrongdoing, has taken full responsibility for his actions, and has expressed sincere remorse. There is no evidence that he knew of Mrs. Garde's Medicaid status or that he intended the harm that befell the Garde family.

As evidence in aggravation, the record shows that respondent's guilty plea to the misdemeanor of offering a false instrument for filing does not fully reflect the scope of respondent's misconduct. Not only did he offer a false document for filing, he made the document false by forging the signature on the deed he offered; he created a fictitious transaction from Garde to Gries; falsely notarized the forged signature; forged the signature again on the real property transfer tax form and had it filed; and then lied about his actions in a letter to cover his misdeeds. As an experienced real estate lawyer, respondent knew, better than most lawyers, that a forged deed created significant problems down the line. He intentionally ignored others' interests, in the name of expediency. By doing so, he crossed over the line of his own moral and professional strictures, thereby violating his duties as an officer of the court.

As additional evidence in aggravation, the evidence showed that his misconduct caused harm to an innocent third party, Rita Garde. By offering his forged deed for filing, he created a public record of the sale of property by Rita Garde to Cary Gries for $19,000. In so doing, respondent created the impression that the Garde family had abundant assets, causing a delay in the determination of Mrs. Garde's application for Medicaid, and probably causing a delay in her surgery. Although respondent did not foresee or intend this specific consequence, such inadvertent harm must nevertheless be noted.

Finally, as evidence in aggravation, the dilemma that respondent found himself in February-March 2000, was at least partly created by his own failures to act expeditiously to allow filing the Garde-Brenner deed in 1998. Specifically, although respondent complained that this transaction had gone on an incredibly long time, the testimony did not reflect due diligence to solve problems with the Garde to Brenner deed, except, ultimately forging a new deed. For example, respondent testified his major concern was that he was not convinced that the property had been properly subdivided. This question was eventually resolved, not because respondent took action, but because a broker sent respondent the tax map in July 1999. On cross-examination, respondent admitted that he could have found the tax map himself in the first place.

> Respondent, engaged for a transfer of property in September 1998, finally offered the forged documents for filing in March 2000.
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> [Exhibit D at 9-11, footnotes and references to the record omitted]

The OAE contended that respondent violated *RPC* 8.4(b) (criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer) and *RPC* 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). Based on respondent's ineligibility to practice law in New Jersey since 1989 and his representation that he has not and will not practice law in New Jersey during the pendency of this matter, the OAE urged us to impose a one-year suspension, beginning March 6, 2003, the effective date of his New York suspension.

* * *

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

Reciprocal discipline proceedings in New Jersey are governed by *R.* 1:20-14(a)(4), which provides as follows:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
> (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 disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(E) the misconduct 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).

Attorneys who have engaged in analogous misconduct have received reprimands or suspensions. *See, e.g., In re Giusti*, 147 *N.J.* 265 (1997) (reprimand where the attorney forged the signature of a client and a notary and used the notary's seal); *In re Buckner*, 140 *N.J.* 613 (1995) (reprimand where the attorney signed his business partner's name to a deed with the partner's oral authorization); *In re Nash*, 127 *N.J.* 383 (1992) (one-year suspension where the attorney backdated and notarized a separation agreement in a divorce action with knowledge that the agreement contained several false statements); *In re Labendz*, 95 *N.J.* 273 (1984) (one-year suspension where the attorney obtained a higher mortgage for his client by altering the purchase price of the property reflected on the real estate contract, thus defrauding the lender); *In re Silberberg*, 144 *N.J.* 215 (1996) (two-year suspension where the attorney witnessed and notarized the signature of a man the attorney knew to be deceased; he also attempted to perpetuate the fraud by providing two false statements to the ethics authorities); *In re Weston*, 118 *N.J.* 477 (1990) (two-year suspension where the attorney signed the seller's name on closing documents without authorization and falsely assured the buyer's attorney that the signatures were genuine; the attorney's father had arranged for several sales of the property without recording the conveyances, with the result that the original owners, whose

mortgage satisfaction was not recorded, remained the owners of record); *In re McNally*, 81 *N.J.* 304 (1979) (two-year suspension where the attorney forged a sheriff's name on a deed).

Here, respondent's misconduct, although serious, was not as egregious as that of Silberberg, Weston or McNally. We, therefore, agreed with the OAE that a one-year suspension, retroactive to March 6, 2003, the date of respondent's New York suspension, is appropriate discipline in this matter.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Robyn M. Hill
Robyn M. Hill
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Steven Adler
Docket No. DRB 03-118

Argued: May 15, 2003

Decided: July 15, 2003

Disposition: One-year suspension

Members	*Disbar*	*One-year 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:		9					

Julianne K. DeCore
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Acting Chief Counsel