

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 03-225 and 03-169

IN THE MATTER OF
PHILIP S. NOCE
AN ATTORNEY AT LAW

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Decision

Argued: October 16, 2003

Decided: December 8, 2003

Brian D. Gillet and Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Joseph T. Castiglia appeared on behalf of respondent.

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

These matters were before us based on a disciplinary stipulation pursuant to R.1:20-15(f) between the Office of Attorney Ethics (“OAE”) and respondent, and on a motion for final discipline filed by the OAE.

Respondent was admitted to the New Jersey bar in 1972. At the relevant times he maintained a law office in River Edge, New Jersey.

Respondent was temporarily suspended by the Court on July 24, 2002, following his guilty plea to one count of conspiracy to commit mail fraud (In re Noce 173 N.J. 325 (2002)). We considered the conduct underlying his guilty plea in the OAE's motion for final discipline (DRB 03-169) discussed below.

Docket No. DRB 03-225

Respondent stipulated to facts establishing that he violated RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

James M. O'Brien¹ first contacted respondent in 1986, for help with title matters. At that time, respondent provided title insurance services through his title company, Elite Title Services, Inc. ("Elite"). O'Brien became a regular customer of respondent, using his services in connection with numerous real estate transactions.

In August 1999, O'Brien requested that Elite update the title work for property located at 56 Jefferson Street, Newark, New Jersey, for the purpose of insuring the deed to Brunswick Avenue Realty Corp. with a purchase money mortgage to be made to a private party, Jerome Spitzer. The owner of the property at that time was Paul Schwartz. Schwartz had taken title to the property by sheriff's deed on January 11, 1999. A closing between Schwartz and James O'Brien and/or Brunswick Avenue Realty Corp. was to take place on August 19, 1999. Jerome Spitzer was to hold the mortgage.

¹ O'Brien was disbarred by consent on December 10, 1999.

Respondent accompanied O'Brien to the closing, in Garden City, New York, at the office of Spitzer's attorney, Stanley Goodman. O'Brien told respondent that he had sent Frank Surrecchio to Schwartz's office in Long Island, to have Schwartz sign the deed of conveyance to O'Brien, because neither Schwartz nor his attorney would attend the closing. When Surrecchio arrived at the closing, he turned the deed over to O'Brien and informed respondent and O'Brien that Schwartz had signed the deed.

After respondent reviewed the deed, he noticed that the grantee listed on it was O'Brien, not Brunswick Avenue Realty Corp., as had been originally planned. O'Brien informed respondent that he (O'Brien), Schwartz and Spitzer had agreed that O'Brien would take title to the property individually. Goodman did not object to the change.

Respondent also realized that, although the deed had been executed, the acknowledgment to Schwartz's signature had not been completed. Because Surrecchio had already left, he was unable to execute the acknowledgement. At O'Brien's request, respondent executed the acknowledgement to prevent the closing from falling through. The acknowledgment stated that respondent was a witness to Paul Schwartz's signature and that Schwartz had come before him on August 19, 1999, and acknowledged under oath that he signed the deed. Respondent admitted that this was not true. He apparently believed that his actions were justified in order to consummate the transaction and because Surrecchio had informed him that he had seen Schwartz execute the deed.

Later, Schwartz alleged that he never signed the deed and filed a lawsuit against O'Brien. Respondent is a third party defendant in the lawsuit. Respondent admitted that his conduct violated RPC 8.4(c) and RPC 8.4(d).

The mitigating factors set forth in the stipulation were that respondent had not been previously disciplined; he had a working relationship with O'Brien for more than ten years; he did not realize any pecuniary gain as a result of his actions; and, when he executed the acknowledgement, he believed that Schwartz had actually signed the deed and that Surrecchio had witnessed Schwartz affixing his signature to the document.

The stipulation provided clear and convincing evidence that respondent violated RPC 8.4(c) and RPC 8.4(d).

The OAE urged us to impose a reprimand, citing In re Boyadjian, 162 N.J. 61 (1999) (reprimand where attorney improperly notarized a document, without requiring the individual to personally appear before him); In re Robbins, 121 N.J. 454 (1990) (reprimand where attorney improperly affixed his jurat to a deed that contained signatures that were not genuine); and In re Coughlin, 91 N.J. 374 (1982) (reprimand for the improper execution of a jurat on an affidavit of consideration or exemption and execution of the acknowledgement on a deed, outside the grantor's presence).

Docket No. DRB 03-169

This matter was before us based on a motion for final discipline filed by the OAE, following respondent's guilty plea on July 16, 2002, to a one-count information filed in the United States District court for the District of New Jersey, charging him with participation in a mail fraud conspiracy in violation of 18 U.S.C.A. § 371.

Respondent's role in the scheme was set forth in a letter from an assistant United States attorney to the sentencing court, requesting a downward departure in its sentence due to respondent's substantial cooperation with the government:

[F]rom in or about April 1995 through at least January 1998, Philip Noce, a real estate attorney with a title insurance business, participated with Robert Jordan and Peter Tortorelli, who were principals of County Mortgage ("County"), HUD approved Direct Endorsement Mortgagee, Raul Torres, a real estate broker and construction manager, and others in a scheme to defraud HUD through the fraudulent procurement of home mortgage loans insured by the Federal Housing Administration ("FHA") for unqualified home buyers. As a result of the fraudulent scheme, HUD suffered an actual loss of over \$2.4 million.

The false information submitted to HUD included fraudulent certifications that the purchasers had received checks which enabled them to contribute to the purchase prices and to qualify for the FHA-insured mortgages. In fact, the gift checks were bogus and no funds from that 'gift check' would actually be given to the purchaser.

Mr. Noce's role was to perform the title work and to act as the settlement agent and closing attorney for the unqualified buyers. At more than 50 closings, Mr. Noce knowingly certified HUD-1 Uniform Settlement Statements and Gift Transfer Certifications which falsely indicated that funds that the purchaser received in a gift check were being paid by the purchaser to the seller in settlement of the real estate transaction. Mr. Noce falsely executed those documents knowing that they would be relied upon by HUD when it evaluated the mortgage, and knowing that they were necessary to the procurement of the FHA-insured mortgage for the unqualified purchaser. Mr. Noce was also aware that Torres was splitting the profits from sales with Jordan and Totorelli [sic]. This kick-back arrangement was prohibited by HUD rules. Thus, Mr. Noce also knew that without his false certifications, the mortgage loans would not be approved and Torres, Jordan and Tortorelli would not receive their profit from the sales to the unqualified purchasers. It should be noted that the Government has no evidence, nor has any witness in this case suggested, that Mr. Noce was paid more than his regular real estate transaction fee in connection with these fraudulent real estate closings.

[Exhibit C to the OAE's Brief and Appendix in Support of Motion for Final Discipline Upon Criminal Conviction.]

Respondent's own recitation of his involvement in the matter is contained in his Presentence Investigation Report.²

39. From the late 1980s until January 1995, Philip Noce, a licensed settlement attorney and closing agent, was employed as the co-owner and operator of the Elite Title Company, Hackensack, New Jersey, wherein his primary job duties were related to title services. In or around January 1995, Raul Torres, a real estate broker, asked Noce if he would be interested in serving as the closing agent for HUD real estate transactions, and the defendant agreed. Because County Mortgage was known for its conservative reputation, and based on his belief that Torres, Jordan, and Tortorelli were "honest" businessmen, Noce believed that he would be performing legitimate legal services as a private settlement attorney and closing agent during lawful real estate closings.

*40. As the closing agent, Noce was required to meet with the prospective home purchaser (i.e., the loan borrower), mortgage agents Jordan and Tortorelli of County Mortgage, and Torres, and explain to the purchaser his or her rights as a loan borrower as well the legal and other documents contained in the loan package. During the meetings, Noce utilized loan packages which were prepared, assembled, and provided to him by others, and that contained loan contracts which were prepared and submitted to County Mortgage by Torres, as well as various other legal documents pertaining to the real estate transaction, including gift transfer certifications and HUD-1 Uniform Settlement Statements. However, during his first closing with Torres, Jordan, and Tortorelli, the defendant noticed, contained in the closing package, what appeared to be a "homemade" gift transfer certification form, which represented that a family member of the buyer had submitted a gift check, on the buyer's behalf, to Torres (i.e., the seller). Noce was told that the form was only for "internal records," and he was advised to sign the same. Knowing that the gift check was not legitimate and therefore in violation of HUD regulations, the defendant signed his name to the closing package in the capacity of the licensed settlement attorney and in representation of the buyer. Noce believed that the closing process was otherwise in accordance with HUD regulations, and that he performed legitimate services for the purchaser and was paid accordingly. After engaging in several more similar closings, the defendant realized that the "gift check routine" was a "sham," and that it allowed buyers to purchase homes with FHA mortgage loans without providing a down payment, as required by HUD regulations.

² In re Spina, 121 N.J. 378, 389 (1990) permitted us to consider any relevant documents, including the pre-sentence report, to obtain the "full picture" in an ethics proceeding.

41. Between 1995 and 1998, and motivated by the legitimate fees that he earned in the capacity of a closing agent, the defendant, along with Torres and others, participated in approximately 80 closing proceedings, of which approximately 50 involved illegitimate gift transfer certifications. Noce indicated that he never received kick-backs, money "off the top," or any funds beyond that what he would typically receive in fees for service as a settlement attorney, and he reported having no knowledge concerning the possibility that other documents contained in the closing packages, including home appraisals, had been fraudulently prepared or manipulated.

*42. The defendant stated that he "deluded" himself when he engaged in the conduct relevant to the instant offense, that he sincerely regrets his actions, and that he must take responsibility for what he did. Indicating that he has never before committed or involved himself in such unethical professional behavior, Noce related that he has "lost a lot" due to accepting "easy work" that "looked like a gift," and that he "could have lived without" the proceeds earned in connection with the crime of conviction.

At sentencing respondent was placed on probation for a period of five years. As a condition of his probation, he was confined to his residence for a period of nine months, and required to pay a fine of \$5,000, and restitution to HUD in the amount of \$2,408,614.

As noted above, respondent has been temporarily suspended since July 24, 2002. The OAE recommended the imposition of a three-year suspension retroactive to the date of his temporary suspension.

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

The existence of a criminal conviction is conclusive evidence of respondent's guilt. R.1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's guilty plea to a one-count information charging him with participation in a mail fraud conspiracy constituted a violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty,

trustworthiness or fitness as a lawyer). Only the quantum of discipline to be imposed remains at issue. R.1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

The level of discipline imposed in matters involving the commission of a crime depends on numerous factors, including the “nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent’s reputation, his prior trustworthy conduct, and general good conduct.” In re Lunetta, supra, 118 N.J. at 445-46.

In cases where attorneys have been convicted of crimes involving false statements in the procurement of loans, the discipline has varied based on the seriousness of the offense. In In re Capone, 147 N.J. 590 (1997), an attorney received a two-year suspension for making misrepresentations to a bank in order to obtain a mortgage loan. Based on the misrepresentations, the bank approved the loan. The attorney later defaulted on the loan. Ultimately, he pleaded guilty to a charge of knowingly making false statements on a loan application (18 U.S.C.A. §§ 1014 and 2). In In re Bateman, 132 N.J. 297 (1993), an attorney was convicted of mail fraud conspiracy for making false statements on a loan application and thereby assisting a client in obtaining an inflated appraisal value for property. To secure \$5,000,000 in financing from a lender to develop certain property which only had an estimated value of \$300,000, substantial collateral was required. The attorney was instrumental in procuring an escalated \$6,500,000 property appraisal value, having arranged the services of a real estate broker for a fee. As a result, the holding company and its principals received approximately \$1,250,000 in advances on a loan. The attorney was sentenced to a suspended five-year prison term, fined \$15,000, and ordered to

perform three hundred hours of community service and was placed on probation for three years. He received a two-year suspension.

Finally, in In re Poling, 121 N.J. 392 (1990), the Court imposed a fourteen-month suspension (time-served) where an attorney pled guilty to preparing a false financial statement in violation of N.J.S.A. 2C:21-4(b)(2). He submitted a closing statement to a vendor that misrepresented the fact that there was no secondary financing on a transaction, when he had prepared a second mortgage for \$4,000 from the purchasers to the sellers. The attorney also had notarized an affidavit wherein the purchasers swore that they did not have any secondary financing.

In this matter, respondent played only a minor role in the conspiracy. He was not one of its instigators, nor did he substantially profit from it, as he received only a “normal” closing fee of \$500 per transaction. Furthermore, his cooperation was so substantial that he received a reduced sentence. Nevertheless, as the OAE emphasized, respondent’s participation in the scheme extended for more than two and one-half years, from April 1995 to January 1998, it involved more than fifty separate transactions, and HUD suffered a loss of more than \$2,400,000. Thus, respondent’s conduct warrants greater discipline than that imposed in the Capone, or Bateman matters.

One last issue must be addressed. Although not charged in either matter, we note that respondent’s conduct included an impermissible conflict of interest. As the co-owner of a title company, respondent performed title work and acted as the settlement agent and closing attorney for unqualified buyers. Respondent’s conduct in this regard runs counter to ACPE Opinion 639, 125 N.J.L.J. 894 (1990), which adopts the prohibition set forth in

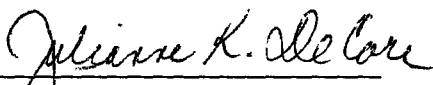
ACPE Opinion 495, 109 N.J.L.J. 329 (1982), that an attorney who represents a purchaser of real estate cannot provide the title insurance through a title insurance company in which he has a beneficial interest. Such a violation, however, does not increase the required discipline in these matters.

Based on respondent's violations in both matters, we unanimously determined to impose a three-year suspension retroactive to respondent's temporary suspension on July 24, 2002. We note that five members would have disbarred respondent were it not for his substantial cooperation with the authorities.

We also determined to require respondent to provide proof of payment of his fine and the restitution, prior to his reinstatement. We have also determined to refer this matter to the OAE for submission to the appropriate regulatory agency charged with licensing title insurance companies.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Acting Chief Counsel

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

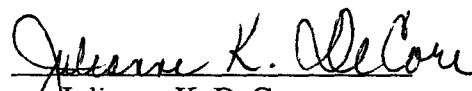
In the Matters of Philip S. Noce
Docket No. DRB 03-169 and DRB 03-225

Argued: October 16, 2003

Decided: December 8, 2003

Disposition: Three-year suspension

<i>Members</i>	<i>Disbar</i>	<i>Three-year Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>		X					
<i>O'Shaughnessy</i>		X					
<i>Boylan</i>		X					
<i>Holmes</i>		X					
<i>Lolla</i>		X					
<i>Pashman</i>		X					
<i>Schwartz</i>		X					
<i>Stanton</i>		X					
<i>Wissinger</i>		X					
Total:		9					


Julianne K. DeCore
Chief Counsel