

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 03-251

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IN THE MATTER OF  
PHILIP J. BATTAGLIA  
AN ATTORNEY AT LAW

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Decision  
Default [*Rule* 1:20-4(f)]

Decided: February 17, 2004

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

Pursuant to *R. 1:20-4(f)*, the Office of Attorney Ethics (“OAE”) certified the record in this matter directly to us for the imposition of discipline, following respondent’s failure to file an answer to the formal ethics complaint. Respondent, through counsel, filed a motion to vacate the default to permit him to introduce evidence in mitigation of his misconduct. In the motion, he

admitted that he had received the ethics complaint and that his conduct was unethical. Although we did not vacate the default, we permitted respondent to submit mitigating evidence. The OAE then filed a reply.

Respondent was admitted to the New Jersey bar in 1981. He was suspended for three months in 1995 for possession of cocaine. *In re Battaglia*, 139 N.J. 610 (1995). On June 19, 2002, he was temporarily suspended for failure to cooperate with the OAE in connection with the investigation of the within grievance. *In re Battaglia*, 172 N.J. 565 (2002). He remains suspended to date.

Respondent represented the buyers of property located in Brielle, New Jersey. Richard Stanzione, the grievant, represented the sellers, Theodore and Jeanine Bessler. The closing took place on April 30, 2001, with respondent acting as settlement agent. According to the HUD-1 Uniform Settlement Statement, two mortgages, one in the amount of \$307,453.89 and another in the amount of \$76,890.09 were required to be paid off at the closing. As settlement agent, respondent was responsible for timely paying off the mortgages. On May 14, 2001, the Besslers learned that the mortgages had not been satisfied and that late charges were accruing as a result of the non-payment of the mortgages.

On May 14, 2001, after the Besslers notified Stanzione that the mortgages remained unpaid, Stanzione contacted respondent, who represented that he had paid off the mortgages and that he would forward copies of his transmittal letter and the checks. On May 15, 2001, respondent "faxed" to Stanzione two letters dated May 1, 2001, purporting to pay off the two loans.

On May 17, 2001, the Besslers learned that, notwithstanding respondent's representation to Stanzione, the mortgages remained unpaid. Subsequent investigation by the OAE revealed that the first mortgage of \$307,453.89 was paid off on May 22, 2001 and the second mortgage of \$76,980.09 was paid off on May 24, 2001. As a result of respondent's failure to satisfy the mortgages timely, the Besslers incurred \$1,619.07 in interest. Respondent paid the Besslers \$1,000 on June 6, 2001, promising to pay the balance of \$619.07. Respondent paid the balance on January 14, 2002, more than six months later. By this time, the Besslers had also filed a grievance against respondent.

According to the complaint, respondent repeatedly failed to timely comply with the OAE's demands for information. On September 12, 2001, the OAE requested certain records from respondent concerning the Bessler real estate transactions and trust account bank statements. A second request for that information was sent on October 10, 2001. Because respondent did not comply with the requests for information, the OAE scheduled a demand audit, to take place on December 4, 2001. That audit was adjourned several times at respondent's request. Although the audit was conducted on February 27, 2002, a continuation audit was scheduled for March 13, 2002, because respondent had not produced all of the requested documents. On the day of the audit, respondent notified the OAE that he could not appear due to car trouble. On March 18, 2002, the day of the rescheduled audit, respondent informed the OAE that he could not appear due to bad weather. After the audit was again rescheduled for 10:00 a.m. on March 21, 2002, respondent sought another postponement. Although the OAE agreed to reschedule the audit to 1:30 p.m. on the same date, respondent failed to appear. He stated that,

anticipating that the OAE would agree to another adjournment, he had scheduled another matter for the afternoon of March 21, 2002. Respondent also informed the OAE that he did not have all of the requested documents.

As mentioned above, on June 19, 2002, the Court temporarily suspended respondent, following a motion filed by the OAE based on respondent's pattern of non-cooperation. The suspension remains in effect.

According to the complaint, respondent practiced law while ineligible for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection ("the Fund"). Respondent admitted the allegations in the complaint. In addition, information provided to us by the Fund indicated that on September 24, 2001, respondent became ineligible to practice law.

The complaint charged respondent with violations of *RPC 1.15(b)* (failure to promptly pay funds to a third party), *RPC 5.5(a)* (practicing law while ineligible), *RPC 8.1(b)* (failure to cooperate with disciplinary authorities) and *RPC 8.4(c)* (conduct involving dishonesty, fraud, deceit or misrepresentation).

The complaint contains sufficient facts to support findings of the violations charged in the complaint. After serving as settlement agent at a real estate closing, respondent failed to timely pay off two mortgages encumbering the property, despite his receipt of sufficient funds for that purpose. Respondent's failure to promptly satisfy the mortgages violated *RPC 1.15(b)*. Respondent's delay caused the sellers to incur additional interest charges of \$1,619.07. Although

respondent eventually reimbursed the sellers, it was not until January 2002, eight months after the closing, that he did so.

After Stanzione contacted respondent about his failure to satisfy the mortgages, respondent violated *RPC* 8.4(c) by misrepresenting that he had paid off the mortgages in a timely fashion. By sending to Stanzione a “fax” indicating that the mortgage payoff checks had been transmitted the day after the closing, respondent also engaged in deceit.

In addition, respondent failed to cooperate with the OAE. He postponed the demand audit on numerous occasions and failed to supply requested documents, resulting in his temporary suspension. His failure to file an answer to the complaint further violated *RPC* 8.1(b). Moreover, respondent practiced law while ineligible to do so for failure to pay the annual attorney assessment.

One additional point warrants mention. The documents submitted to the Court in support of the OAE’s motion for respondent’s temporary suspension raised the possibility of knowing misappropriation. The complaint, however, stated that the OAE’s investigation disclosed that respondent did not misappropriate trust funds.

The remaining issue is the quantum of discipline to be imposed. In default cases involving similar violations, short-term suspensions have been imposed. *See, e.g., In re Van Wart*, 162 *N.J.* 102 (1999) (attorney received a three-month suspension after he failed to deliver a deed to a third party, practiced law while ineligible, and failed to cooperate with disciplinary authorities, in violation of *RPC* 1.15(b), *RPC* 5.5(a) and *RPC* 8.1(b)); *In re Dudas*, 156 *N.J.* 540 (1999) (attorney received a three-month suspension for failing to safekeep funds and turn them

over to a third party who had obtained a judgment against respondent's client, lack of diligence, and practicing law while ineligible, in violation of *RPC 1.3*, *RPC 1.15* and *RPC 5.5(a)*); *In re Dogan*, 127 N.J. 385 (1992) (three-month suspension imposed on attorney who failed to safeguard client funds, failed to comply with recordkeeping requirements, practiced law while ineligible, failed to cooperate with disciplinary authorities, and knowingly made a false statement of material fact to disciplinary authorities, in violation of *RPC 1.15(a)* and(d), *RPC 5.5(a)*, *RPC 8.1(a)* and (b), and *RPC 8.4(c)*).

Respondent presented the following mitigating circumstances for our consideration. He abused alcohol during the time period of the events recited in the complaint, sought rehabilitation, remained sober for several months, abused alcohol again, and currently receives treatment from a physician. He also regularly attends Alcoholics Anonymous meetings. According to respondent, the alcohol abuse impaired his judgment and was the causative factor of his misconduct. The Court has held that alcoholism is a mitigating factor to be considered when imposing discipline for unethical conduct. *See, e.g., In re Yetman*, 132 N.J. 157 (1993); *In re Wurth*, 131 N.J. 453 (1993); *In re Willis*, 114 N.J. 42 (1989). Respondent is remorseful about his conduct and regrets the damage done to the Besslers and to the justice system. He pointed to evidence of his good character, his exemplary conduct after the infractions mentioned in the ethics complaint, the low risk of recurrence of the offenses, the absence of personal gain, the lack of injury to any clients, his admission of wrongdoing, and his subsequent remedial conduct. Respondent asked that any suspension to be imposed be considered served during the period of his temporary suspension.

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

In the Matter of Philip Battaglia  
Docket No. DRB 03-251

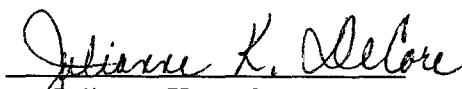
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Decided: February 17, 2004

Disposition: Three-month suspension

<i>Members</i>	<i>Disbar</i>	<i>Three-month 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					
<b>Total:</b>		5					4

  
Julianne K. DeCore  
Chief Counsel